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GAO United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

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February 25, 1992

The Honorable William V. Roth, Jr.
United States Senate

Dear Senator Roth:

As you requested, we reviewed the administrative operations of the International Trade Commission (ITC). We focused on the ITC chairman's and the five other commissioners' decision-making responsibilities created by statute and compared them to 15 other independent federal commissions. We reviewed decisions affecting the ITC's budget, personnel, and organizational structure and the creation of an Office of Inspector General.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to ITC and appropriate congressional committees. We will also make copies available to others on request.

This report was prepared under the direction of Allan I. Mendelowitz, Director, International Trade, Energy, and Finance Issues, who may be reached on (202) 275-4812, if you or your staff have any questions. Other major contributors are listed in appendix IV.

Sincerely yours,

Frank C Conahan

Frank C. Conahan,
Assistant Comptroller General

Executive Summary

Purpose

Because of concern about how well the International Trade Commission (ITC) is functioning and whether its operations are hindered by the methods used for administrative decision-making, Senator William V. Roth, Jr., asked GAO to (1) assess the ITC's structure and operations, focusing on the powers and administrative responsibilities of the chairman; (2) examine problems in specific administrative areas, including the budget, personnel, and organizational structure and the creation of an ITC Office of Inspector General; and (3) compare the agency to other independent federal commissions and consider particular options to improve the ITC's administrative effectiveness. GAO did not evaluate the ITC's substantive decisions on trade matters.

Background

The International Trade Commission is an independent agency that conducts statutory trade-related investigations and studies, and reports on a wide range of international trade and economic policy issues for the President and the Congress. Its authorized staff of about 500 support a six-member, politically balanced commission led by a chairman.

In 1977, management problems prompted the Congress to change the ITC statute to its current form. The ITC statute made the chairman the administrative head of the agency. The Congress believed that by strengthening the chairman's position, more administrative responsibilities would be delegated to ITC staff, and commissioners could focus more on substantive work, rather than administrative issues. However, the Congress constrained the chairman's power, retaining a commission role in decision-making to assure the ITC's independence and objectivity.

Results in Brief

The ITC's statute is ambiguous about whether the chairman or the commission as a whole has ultimate responsibilty for the administration of the ITC. On the one hand, the statute provides the chairman with the authority to administer the agency. On the other hand, the statute provides the commission with authority to approve the ITC's budget and to override any administrative decision made by the chairman. The overlap of these provisions is a root cause of problems in administrative decision-making.

Disagreements between chairmen and commissioners about who is responsible for administering ITC have routinely had an adverse effect on agency operations, even though most administrative decisions are delegated to the staff and receive little commission-level attention. Areas affected include budget, personnel, organizational, and Inspector General issues. The

disagreements have created conflicting staff priorities, delayed decision-making, caused vacant positions to go unfilled, and created general inefficiencies.

While the statutory design of all commissions naturally fosters debate, the ITC chairman's administrative authority is among the most limited found in a federal commission. The organizational structures and administrative authority of other commissions offer options to consider in revising the administrative roles and responsibilities of the ITC chairman and the other commissioners.

Principal Findings

Disagreements Over Authority to Make Administrative Decisions

Various provisions of the ITC statute have created disagreements over the chairman's and the other commissioners' authority to make administrative decisions. The ITC chairman serves as the administrative head of the agency. However, the ITC statute limits the chairman's administrative authority. A majority of the commissioners must approve the ITC's budget. However, the chairman alone executes this budget. Only the chairman can initiate an administrative action, but a majority of the commissioners can "override" a chairman's decision.

Reecent chairmen have believed they are responsible for ITC administration. At the same time, other commissioners have believed that the entire commission is responsible. As a result, there have been differences of opinion concerning the chairman's and other commissioners' proper roles in the budget process and concerning the use of the commissioners' authority to override the chairman's administrative decisions. Because this override authority extends to all administrative decisions, other commissioners' roles extend into some day-to-day management issues. In addition, an ongoing dispute exists over whether the chairman's expenditure plans to implement the budget require commission approval under the statute.

The checks and balances found in the ITC's general structure tend to exacerbate these conflicts. The chairman is selected by the President from the commission to serve a single 2-year term and must alternate political party affiliation. The six commissioners serve 9-year terms and are balanced so that a majority are not from the same political party.

Disagreement About Responsibilities Has Affected Operations

The disagreement over the chairman's and other commissioners' authority make specific administrative issues difficult to settle. Most administrative decisions are delegated to the staff and receive little commission-level attention. However, disagreement over responsibilities has caused problems in formulating and implementing the ITC's budget, in managing personnel, in determining organization, and in implementing a new statute creating an Office of Inspector General.

Some issues have lingered for years without resolution in an administrative "gridlock." Some commissioners and ITC officials believe that the implementation of the sttatutory checks and balances has created a general culture against change and innovation. The chairman and the other commissioners may eventually resolve their conflicts on specific issues, but the current system has inefficiencies such as conflicting priorities for staff and delayed decision-making. While the commission structure is designed to foster debate, it is ultimately intended to result in a consensus.

The other commissioners closely monitor not only the chairman's formulation of the budget, but also the chairman's implementation of the budget. Decisions approving the budget are made at the last minute, and the lack of commissioner consensus gives contradictory guidance to staff and generates controversy. Disputes over whether particular budget decisions require commission approval have gone on for years. Personnel decisions are also affected; as a result, some senior positions have gone unfilled for over a year. Commissioners have also rejected the chairman's selections and involved themselves in some lower-level personnel management decisions. Similar problems have occurred over organizational decisions. For example, the other commissioners initiated an organizational change that the chairman refused to physically implement, placing ITC staff in the middle of the dispute. Differences over their administrative roles also delayed the creation of an Office of Inspector General and subsequently affected the office's staffing level.

Options for Improving Administrative Effectiveness

The ITC chairman's administrative power is limited compared to that of the chairmen in 15 other major federal commissions GAO surveyed. The short term and alternating political affiliation of the ITC chairmanship are unique and affect a chairman's ability to control the agency. The 9-year term and political balance of the six commissioners are also significant.

The administrative override provision of the ITC statute is unique. Other commissions' chairmen also have limits on their administrative authority,

but these limitations are more narrowly defined. For example, in some agencies majority commission approval is required only for specific budget and senior personnel selections and not for any lower-level decisions.

Other commissions' statutes illustrate options available for changing the ITC's administrative decision-making: (1) the ITC's general structure could be changed to give the chairman greater power in resolving administrative disputes; (2) the ITC's administrative provisions could be amended to make them more like other agencies with clearer authority; (3) these provisions could be amended further to better define responsibilities for budget decisions; (4) an executive director position could be established with responsibility for managing ITC, thus freeing the chairman and the other commissioners from administrative decisions.

Matters for Congressional Consideration

Changes to make ITC administrative decision-making more efficient and less argumentative can be made without threatening the independence and objectivity of the agency's substantive work. Some of the options GAO reviewed appear to address the root cause of the ITC's problems better than others. The Congress may want to consider replacing the commission's current statutory administrative override authority with a requirement for commission approval of a chairman's appointment of senior personnel and of a chairman's reorganization of offices. Also, the Congress may wish to clarify the statutory provisions concerning the budget and give the chairman responsibility for the expenditure of appropriated funds within the broad guidelines approved by the commission in its budget request.

Agency Comments

The Acting Chairman and a group of three other commissioners provided two different sets of comments on a draft of GAO's report (see app. II and III). The Acting Chairman and the other commissioners strongly disagreed with each other about the need to change administrative authority at ITC. The three commissioners generally felt that there were no problems that require legislative changes. They said the disagreements over the ITC's administrative decisions were basically caused by past chairmen who did not adequately seek a consensus among a majority of commissioners. The Acting Chairman agreed with GAO's characterization of the problems identified. She believed that the chairman's authority needs to be substantially strengthened to carry out the objectives of the 1977 amendments to the ITC's statute. Since GAO received agency comments, a new ITC chairman has been appointed.

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Abbreviations

CCR	Commission on Civil Rights
CFTC	Commodity Futures Trading Commission
CPSC	Consumer Product Safety Commission
EEOC	Equal Employment Opportunity Commission
FCC	Federal Communications Commission
FEC	Federal Elections Commission
FERC	Federal Energy Regulatory Commission
FMC	Federal Maritime Commission
FMSHRC	Federal Mine Safety Health Review Commission
FTC	Federal Trade Commission
GAO	General Accounting Office
ICC	Interstate Commerce Commission
IG	Inspector General
IRM	information resource management
ITC	International Trade Commission
NLRB	National Labor Relations Board
NRC	Nuclear Regulatory Commission
NTSB	National Transportation Safety Board
SEC	Securities and Exchange Commission

Chapter 1

Introduction

What Is ITC?

The U.S. International Trade Commission (ITC) is an independent federal agency that conducts statutory trade-related functions. Established in 1916, ITC was originally named the U.S. Tariff Commission. The authorized staff of about 500 and budget of about $40 million support the work of the commission led by the chairman.

Pursuant to the ITC's statute (19 U.S.C. 1330), six commissioners are appointed by the President with the advice and consent of the Senate for fixed, but staggered, 9-year terms. Commissioners cannot be reappointed to another term unless they have served less than 5 years. Not more than three of the commissioners can be of the same political party, and their appointment should alternate party affiliation. The President also designates a chairman and a vice chairman for fixed, 2-year terms. The President must choose chairmen of alternating party affiliation and who have had at least 1 year of continuous service as a commissioner.[1] The chairman and the vice chairman cannot be of the same political party.

ITC performs quasi-judicial functions and conducts investigations concerning (1) whether an industry has been injured by increased imports or imports of goods that have been subsidized or sold at less than fair value, (2) what the effects of unfair import practices have been, and (3) whether agricultural imports have interfered with certain federal programs. ITC, at the request of the President, the Congress, or on its own volition, undertakes comprehensive studies and provides reports on a wide range of international trade and economic policy issues. Based on these findings, ITC can recommend that imports be restricted and provide information for the Congress to use as the basis for trade legislation and for the executive branch to use in trade negotiations. ITC also works with other agencies to classify traded goods into categories for statistical purposes.

What Are Commissions?

Commissions are independent agencies with multimember leadership. Commissions occupy a unique place in the government because they are insulated from day-to-day executive or legislative branch supervision. There is no strict legal definition of a commission.[2] However, statutory provisions are intended to ensure the independence of these agencies and to produce collegial (group) decision-making that balances conflicting views.

[1] Public Law 102-185 (Dec. 4, 1991) recently amended the procedures for appointing the ITC chairman.

[2] For example, the Administrative Conference of the United States has advised us that it knows of no legal distinction between a "commission" and a "board."

Collegial decision-making is meant to create greater accuracy, consistency, and fairness.

Commissions typically have certain characteristics that balance the interests of the members and both the executive and legislative branches. For example, members are usually appointed by the President and confirmed by the Senate for a fixed term of office. The President cannot nominate more than a simple majority of the members from the same political party, and members can be removed only for specific reasons.[3]

While collegial decision-making has its advantages, it is regarded as inherently more difficult and cumbersome. A number of government studies over the last 50 years have been critical in varying degrees of the commission structure and commission decision-making. Inefficient and ineffective administration and policy coordination with other agencies were among the concerns cited.[4]

A chairman chosen by the President heads almost every federal commission. The chairman presides over a commission's meetings where substantive decisions are made.[5] Otherwise, the chairman is equal to other members in any decision-making vote. Substantive decisions require at least a majority of a quorum of the membership. In contrast, the chairman, rather than the entire commission, usually has statutory responsibility for the administration of the agency.

Administrative Versus Substantive Decisions

Administrative decision-making is largely separated from substantive decision-making. Administrative decisions are those that manage the agency's resources such as hiring staff, purchasing equipment, and organizing the agency's work. Substantive decisions are those that carry out the business of the agency as defined by statute. For example, commissions may make rules and regulations, adjudicate disputes, and perform investigations and prepare reports. Sometimes the difference between administrative and substantive decisions is difficult to distinguish. For example, a decision to cut the travel funds of an investigation could be viewed as either an administrative or substantive decision, or both.

[3]See P. Verkuil, "The Purposes and Limits of Independent Agencies," Duke Law Journal, No. 69 (1988).

[4]For a summary, see Consumer Product Safety Commission: Administrative Structure Could Benefit From Change (GAO/HRD-87-47, Apr. 9, 1987).

[5]A commission's meetings are usually covered by the Government in the Sunshine Act (90 stat. 1241 (Sept. 13, 1976)), which opens the decision-making process to public observation.

Although a chairman is generally given additional powers as administrative head of the agency, these powers are often checked to prevent upsetting the balance of power among commissioners in making substantive collegial decisions. In this way the efficiency gained by an individual chairman's control of personnel, funds, and other resources is balanced by the security gained from having all commissioners involved in certain decisions. There is a natural tension between the goals of achieving administrative efficiency and safeguarding the independence and objectivity of a commission's substantive work.

Power Is Determined by Three Factors

The ability of a chairman to prevail in group decision-making can be described in the chairman's "power." Power is not easily quantified, but generally three factors affect the extent of a chairman's power in making administrative decisions.

(1) Statutes create a general balance of power through rules for the composition of the commission. For example, if the chairman is a member of the majority political party on a commission with an odd number of members, the chance of being outvoted for partisan reasons is reduced. More specifically, statutes set rules for administrative decision-making. The greater a chairman's administrative decision-making authority, the greater the chairman's ability to make administrative decisions unilaterally and overlook the views of other commissioners. Conversely, if statutes put more checks on a chairman's authority, the other commissioners have more power.

(2) The personality and leadership style of the chairman and the other commissioners affect how well they work together in practice. Interpersonal skills can be critical for a chairman to build a consensus and to compromise, bargain, or change the views of opposition.

(3) The nature of the politics surrounding a commission's substantive work affects the chairman's effectiveness. For example, highly controversial issues can make a commission divisive and less likely to follow a chairman's leadership.

Over time, these three factors can help make a consistent pattern of decision-making become part of the commission's culture or tradition. This tradition in and of itself can subsequently become another factor controlling the exercise of power. Our review did not focus on the personality or leadership styles of the ITC chairmen or the politics surrounding the ITC's

substantive work. Rather we looked at the ITC's statute and the patterns of decision- making.

The History of the ITC Chairman's Administrative Authority

The administrative authority of the ITC chairman stems from 1977 amendments to section 330 of the Tariff Act of 1930.[6] These amendments represented a congressional compromise to create a stronger chairmanship, but with important statutory limitations. The Congress purposefully constrained the chairman's power in order to ensure the ITC's independence and objectivity. The history of the ITC's current statute reflects that congressional concerns about preserving the ITC's independence influenced the Congress' crafting of the ITC's specific commission structure.

The chairman was made the administrative head of the agency to end the other commissioners' involvement in day-to-day operations. The Congress believed that by strengthening the chairman's position ITC staff would perform more administrative tasks, and the commissioners would end debates on administrative matters and devote their attention to substantive matters. Internal administrative problems had led to the statutory changes concerning the ITC's administrative decision-making. The Congress found that the previous structure of administrative decision-making had detracted from the ITC's substantive work.

The Congress had three general concerns that led to the current statute.

(1) Before 1977, all ITC administrative decisions were made by the entire commission, thus involving all six members in "administrative minutiae." Hence, no one individual was responsible for day-to-day decision-making. Group decision-making took valuable time away from the commission's substantive work on trade matters.

(2) ITC was experiencing management problems, especially in filling vacancies and delegating administrative duties to staff. Despite an extensive reorganization that included eliminating an executive director position and establishing separate Offices of Administration and of Operations, the commission delegated virtually no administrative authority to the staff.

(3) Public dissension among the commissioners was hurting the ITC's reputation and its effectiveness as an independent agency. A "high degree of partisanship" often had stalemated the commission with 3-to-3 votes on

[6]The amendments are contained in the ITC's fiscal year 1978 authorization and appropriations bill passed as Public Law 95-106 (Aug. 7, 1977).

"minor" administrative issues. The Congress felt the antagonism created over administrative matters had affected the ITC's ability to deal effectively with trade matters.

To relieve these problems, in 1977 the Congress sought to give more administrative authority to the chairman and change how administrative decisions were to be made within ITC. The Congress had historically rejected the notion of a "strong ITC chairman" but believed some strengthening of the chairman's administrative authority was required. Both the House and the Senate proposed different amendments to make the chairman the chief administrative officer.

The principal disagreement between the House and the Senate concerned the amount of administrative authority to vest in the ITC chairman. The House proposed that the chairman be responsible for administration, except for certain areas that would be subject to the approval of a majority of commissioners. The Senate proposed what was, at the time, considered a stronger chairmanship, responsible for all administrative matters but subject to the disapproval of a majority of the commissioners.

In addition, both the House and the Senate sought changes in the ITC's leadership structure. To make ITC more independent from the executive branch, the Trade Act of 1974 removed the President's power to annually appoint the chairman. Instead, the act created a rotating position whereby the most senior commissioner would serve out his or her last 18 months in office as chairman. By 1977, the Congress believed that this type of rotating chairmanship had weakened ITC. The 18-month term was considered too short for a chairman to be effective, and the rotating nature of the chairmanship was not providing ITC with the best leadership.

An agreement reached between the House and the Senate represented what one congressman called a "sound middle ground" between a strong and a weak chairman. The chairman was made individually responsible for all administrative decisions, subject to the disapproval of a majority of the commission.[7] In addition, the Congress imposed greater limitations on the chairman's decisions in two areas: Termination of high-level personnel and formulation of the annual budget were made subject to commission approval.

The Congress also agreed to structural changes that gave the chairman more power in general. For instance, the responsibility to appoint the

[7]Each commissioner retained control of his or her personal staff.

chairman was returned to the President, and the chairman's term was increased to 2 years. Congress hoped that this longer term, plus the prestige of a presidential appointment, would provide more capable and more willing individuals to chair ITC and promote the respect and support of the other commissioners.

Objectives, Scope, and Methodology

Because of concern about how well ITC is functioning and whether its operations are hindered by the methods used for administrative decision-making, Senator William V. Roth, Jr., requested that we

- assess the ITC's structure and operations, focusing on the chairman's powers and administrative responsibilities;
- examine problems in specific administrative areas, including the budget, personnel, organizational structure, and creation of an Office of Inspector General; and
- compare ITC to other independent federal commissions and consider particular options to improve the ITC's administrative effectiveness.

We reviewed the ITC's statute and its legislative history, as well as regulations, internal directives, and administrative orders to determine the division of responsibilities within ITC. We reviewed official transcripts and memoranda. We interviewed all commissioners then in office and their personal staff, as well as former commissioners, to examine how administrative decisions were made. We also interviewed senior agency staff, reviewed various agency documents, and analyzed certain data on each of the four specific areas of interest: budget, personnel, organizational issues, and the Inspector General function. We focused our review on the ITC's recent administrative decisions, roughly the last 6 years. We did not review the ITC's substantive work, such as how it conducts investigations or makes determinations.

We compared certain characteristics of ITC pertinent to administrative decision-making to those of 15 other independent commissions. The commissions we selected to compare represent over half of all permanent independent commissions in the federal government and are listed in appendix I. We compared their membership and the role of the chairman, including statutory decision-making authority, actual administrative decision-making, and conflict over administrative issues. We focused on three administrative issue areas: budget decisions, personnel decisions, and reorganization decisions. We did not review specific decisions at commissions other than ITC. To confirm our understanding of the structure and to gather

general information on actual decision- making, we conducted structured interviews with the senior staff at each of the 15 commissions and ITC. We did not independently verify the information gathered about these other agencies, but corroborated it with agency officials. We also reviewed previous comparisons of commissions, including work done by the Administrative Conference of the United States.

We conducted our work in Washington, D.C., from July 1990 to October 1991 in accordance with generally accepted government auditing standards.

We obtained comments on a draft of this report in December 1991 from the Acting Chairman, other commissioners, and senior ITC staff, which we evaluated and incorporated as appropriate. Since we received these comments, a new ITC chairman has been appointed.

Disagreement Over Administrative Responsibilities at ITC

In 1977, the Congress made the chairman the principal administrative decision-maker at ITC. Nevertheless, the Congress also limited the chairman's administrative authority in order to constrain the chairman's power. The other commissioners retained a role in administrative decision-making to ensure the ITC's independence and objectivity. The unique ITC statutory language providing for other commissioners' involvement in administrative decisions has created disagreements and ambiguities about the roles and responsibilities of the ITC chairman and other commissioners.

The Statute Balances Power

The ITC's structure was designed to protect commissioners' independence from external political pressure and to balance the internal political forces in their decision-making. Presidential appointment and Senate confirmation of all commissioners were to guarantee that each commissioner is acceptable to both branches of government. The even number of members and the political balance was to engender a commission majority that must include members of different party affiliation. The fixed 9-year term without reappointment was to give commissioners the security of a long term and to remove the chance of pressure on commissioners to make decisions, not on the merits, but to please the President or the Congress so as to extend their appointment.[1]

Similarly, the alternating party affiliation and short fixed term of chairmen (and vice chairmen) limit the ability of any commission leader or politically affiliated group to exercise the added administrative power of the post for very long. Because of the budget cycle, each chairman will usually only execute one budget that he or she initiated. In addition, some administrative actions must be implemented during the term of the next chairman, who could reverse a previous decision.[2] Because the President cannot appoint a new commissioner as chairman, every chairman has commission experience and some independence from the President. Other provisions protect the independence of each commissioner.

[1] However, any commissioner appointed to fill an unfinished term of less than 5 years may be reappointed to a new full term.

[2] At the time of our review, the administrative head of the agency had served longer than 2 years because the President had not appointed a new chairman; the former chairman became acting chairman by virtue of being appointed the vice chairman.

The Chairman Is the ITC'S Administrative Head

The ITC's statute makes the chairman the administrative head of the agency. The chairman has the authority to appoint and pay employees, hire consultants, and exercise "all other administrative functions of the Commission."[3] However, any such decision by the chairman is "subject to disapproval by a majority vote of all the commissioners in office." This disapproval, or "override," provision gives a commission majority a veto power and limits the chairman's authority. Thus, in essence, the chairman's and the other commissioners' authority overlap.

While the commission majority can nullify the chairman's decisions, only the chairman can initiate administrative actions. The ITC's General Counsel has taken the position that the statute does not permit other commissioners, nor a commission majority, to initiate a purely administrative decision. A commission majority can only block a chairman and not substitute its own decision for the chairman's decision.

While the ITC chairman is the administrative head of the agency, the statute creates a situation that a former ITC general counsel has described as "only a partial or incomplete delegation of administrative authority." The official believed that the full commission retained some ultimate legal responsibility for all administrative decisions. Furthermore, he said the full commission has the authority to review a chairman's actions or proposals and to approve or disapprove as appropriate.

Ambiguity Exists in Exercising Authority

The ITC's statute creates ambiguity about how the chairman and the other commissioners are actually to share responsibility for making administrative decisions. Also, the line between the commission's authority to approve budget formulation and the chairman's authority to implement the budget is unclear. According to the Chairman in 1991, the statute gives the chairman all the responsibility for administering the agency but not all the authority necessary to fulfill that responsibility. Other commissioners argue that the statute still makes the commission responsible for the ITC's administration and gives the chairman the power to act on their behalf.

Because of the ambiguities, both sides have different opinions about how decisions should be made. We found that disputes over the chairman's authority were evident in disapproved budget proposals and in overridden decisions. Some commissioners have accused their colleagues of "micro-management" of the agency through using the administrative

[3]The control of personal staff and expenses of individual commissioners are exempt from the chairman's administrative authority.

override and budget approval authorities. In response, other commissioners have criticized the chairman's decision-making methods as attempts to take unilateral actions without consulting and following the opinions of the majority.

Override Provision Interpreted Differently

The Chairman interpreted the ITC's statute as giving the chairman sole authority and responsibility for managing ITC. According to the Chairman in 1989,

> [I]t is plain that Congress did not intend the Commissioners to use the override power simply to indicate every difference of opinion with the chairman on administrative matters. The override power was intended to allow correction when the action of the Chairman on a serious matter appears so inimical to the functioning of the Commission that extraordinary action is warranted.

The Chairman complained that other commissioners' extreme use of this override authority constrains the chairman's ability to effectively manage the agency. The Chairman also said that this override authority imposes "what amounts practically to a consensus requirement on administrative decisions within the ITC."

In contrast, other commissioners interpreted the statute as requiring them to oversee all the chairman's administrative decisions. Based on this interpretation, some commissioners asserted the statute gives "the Commission majority a voice and the right to block actions it does not find reasonable or appropriate." Contrary to the Chairman in 1991, other commissioners believed the override was clearly intended to apply to all administrative decisions and is not limited to some class of acts and functions. Otherwise, "a chairman could follow a personal agenda that could drastically alter the direction of the agency and possibly compromise the ITC's independence," one commissioner wrote.

Commissioners believe they have a responsibility to monitor and participate in agency management decisions despite evidence in the conference report that the 1977 amendments to the ITC's statute were intended to end their involvement in day-to-day operations. Some commissioners told us that they saw no serious management problems at ITC. However, the commissioners did have differences of opinion with the chairman on specific decisions.

The Authority of the Chairman and Other Commissioners to Make Budget Decisions Overlaps

The statute further balances power by requiring that ITC commissioners approve, by majority vote, formulation of the annual budget and termination of employment of a supervisory employee. The Congress believed that a majority of the commissioners should "agree in broad terms on the magnitude of the resources to be sought and the general priorities to be assigned to the utilization of these resources." The chairman initiates an annual budget proposal, but the other commissioners may amend it. Thus, unlike decisions in other administrative areas, during the budget process a commission majority can make administrative changes that they otherwise would not be able to initiate.

The chairman's and other commissioners' administrative roles in budgetary decisions are unclear. The statute provides that "subject to approval by a majority vote of all the commissioners in office, the chairman may formulate the annual budget of the commission." The ITC General Counsel, however, has found no clear guidance for what kind of details must be approved by the commission. According to the General Counsel, the use of the word "formulate" with the word "budget" in the ITC's statute broadens the scope of what is subject to commission approval. Therefore, in the chairman's annual budget, not only the total staff level and dollar amounts, but also the formulation (i.e., the basis and rationale for development) is subject to commission approval. This interpretation gives the commissioners effective authority over the allocation of funds and staff among offices.[4] However, commissioners have had difficulty reaching consensus over both the total amount of resources to request from the Congress and their internal allocation.

While the chairman develops a budget proposal for commission approval, the other commissioners thoroughly review the chairman's proposal, a practice they believe necessary to fulfill their statutory obligations. The chairman initiates the budget formulation process by having administrative staff compile requests from all senior managers, based on projected work loads, and make a "staff budget recommendation." The chairman reviews and revises this recommendation, which allocates funds and staff to each office to create a draft budget proposal. The draft proposal is then sent to each commissioner for review and comment. In evaluating the chairman's draft proposal, commissioners review the individual requests made by the

[4] The budget's level of detail in allocating resources includes what are known as functional or object class breakdowns (e.g., salaries, travel, and equipment) and a staffing plan (i.e., the number of employees in each office).

senior managers. Some commissioners now review even more detailed budget information and meet with staff to discuss the chairman's proposal.[5] In an attempt to build a consensus, the chairman considers comments from each commissioner to formulate a revised budget proposal that is then presented in a formal public meeting for commission approval.

After the budget has been formulated by the chairman and approved by the commission, it goes to the Congress without review by the Office of Management and Budget. The Congress then approves (or amends and approves) the total staff level and dollar amounts. Exemption from Office of Management and Budget review is another example of Congress' intention to preserve the ITC's independence.

Debate Over the Expenditure Plan

The chairman is responsible for budget execution and the use of resources by the agency. The chairman may not take unilateral actions inconsistent with the commission-approved budget and its allocation of resources nor with the appropriation enacted by the Congress. In addition, the chairman's actions to execute the budget can be limited by the commissioners' override authority. The chairman can seek commission approval to amend the budget and to request supplemental appropriations.

The first step in the budget execution process is the chairman's development of an expenditure plan. The plan assures that staffing and funding allocations will be within the commission's approved budget.[6] At this point, the chairman exercises primary responsibility for decision-making.

Whether a particular budget decision needs to be submitted to the commission for approval has been the subject of long-standing dispute among the commissioners. The statute gives the other commissioners approval authority over the chairman's formulation of the budget but does not define "budget formulation." The definition of the term determines which decisions require commission approval and which decisions are the chairman's, subject to commission override.

[5]This information is more detailed than in the (anticipated) expenditure plans. It allows commissioners to see how spending in each office is allocated by each object class.

[6]The expenditure plan represents funding obligations for the current year; it is included as part of a chairman's budget proposal for future years. The chairman's budget proposal may also include an anticipated or preliminary expenditure plan for the next fiscal year.

In particular, the debate has centered over whether the chairman's expenditure plan is part of the budget and should be submitted for a formal vote. What constitutes budget formulation as opposed to budget execution thus affects how much control the chairman has as opposed to the other commissioners in making budgetary decisions. The result affects the chairman's discretion and the commission's ability to set guidelines and to initiate actions.

The ITC General Counsel has tried to interpret the line between the authority granted to the entire commission and the authority granted to the chairman. Relying on legislative history and agency precedent, the ITC General Counsel has concluded that expenditure plans are not necessarily part of budget formulation and thus do not necessarily require commission approval. Because expenditure plans are used by the chairman to execute the budget, they are administrative actions.

However, the ITC General Counsel further concluded that expenditure plans do require commission approval if they alter the funding and staffing allocations approved in the original budget sent to the Congress. Hence, an inconsistency would be tantamount to amending the commission-approved budget and would, therefore, also require commission approval. The ITC General Counsel's advice has not resolved the dispute for the commission.

We found that this inconsistency between the approved budget and the expenditure plan has routinely occurred because the Congress appropriated an amount different from the one approved by the commission. Because of the broad definition of the budget provision (as including the allocation of funds and staffing), the commission must reconcile the commission's budget with the subsequent appropriation. However, the process the commission uses to accomplish this reconciliation has been erratic. In some years, there was no vote to reconcile the amounts—such decisions were left to the chairman's discretion—and in other years there was a formal vote.

The Chairman and some commissioners have disagreed with the ITC General Counsel's and other commissioners' opinions on the need for the commission to approve the expenditure plan once Congress has appropriated funds. The Chairman stated that once the "Congress has appropriated funds, the expenditure of those funds is an administrative function subject to the object class ceilings in the majority approved budget. There is no need to approve an allocation again and again and again."

The commission approves an allocation of funds with the budget. An additional vote on the expenditure plan 1 year later creates another opportunity for a commission majority to change the allocation of resources in the agency. The Chairman views such actions as "micro-management."

Other commissioners believe their vote is necessary in order to exercise what they see as their responsibility to guide ITC. Votes on the expenditure plan are a way for the commission to guarantee that the budget it approved is actually implemented by the chairman. The Chairman's attempts to go forward without other commissioners' approval are viewed by some commissioners as a violation of the responsibilities established by the ITC's statute.

Administrative Decision-making at ITC Has Problems

The disagreement over the chairman's administrative authority affects agency management. Commissioners are still involved in some day-to-day decisions. Disputes occur between the chairman and commissioners over formulating and implementing the agency budget, selecting personnel for key positions, changing the organizational structure, and creating an Office of Inspector General. Some issues linger for years without resolution, in a decision-making "gridlock." Even though the commissioners eventually resolve their conflicts, the current system results in inefficiencies such as conflicting priorities for staff and delayed decisions.

The statute creates a unique dynamic in decision-making between a chhairman and the other commissioners that makes large shifts in policy unlikely and creates what some regard as a general culture against innovation and change. In fact, some agency officials believe that the statute has created a natural coalition of commissioners against the chairman. While in office, a chairman must share administrative responsibility with a commission comprised of former chairmen and aspirants to be future chairmen, half from a different political affiliation. The interests of these individual commissioners can work against any attempt to make significant management changes. Decisions delegated from the chairman to the staff are affected by the overlapping authority. Thus even staff actions must have the support of both the chairman and a commission majority.

The commission participates in administrative decision-making in two ways. First, a commission majority can override a chairman's administrative decision. Second, when a majority of the commission disagrees with the chairman's budget proposal, they can decline to approve it and substitute their own proposal as an amendment.

The actual number of overrides that we could document was small because there is no uniform practice for commission review and rejection of a chairman's administrative decisions. Commissioners and staff estimated that there were few overrides each year. However, we found that the effect of the override provision extends beyond its actual use. For example, we found instances in which commissioners wrote the chairman threatening to override decisions they thought were about to be made. In addition, we were told by commissioners (including the chairman) and staff that many decisions were not made or were postponed because of the potential for an override by the commission.

Authority Affects the Consensus Necessary for Decisions

The applicability of the commission's override and budget approval authorities affects the consensus necessary for a chairman's decision to go forward. Practically, a chairman needs the votes of three other commissioners for approval of a budget proposal and the support (votes) of two other commissioners to prevent an override of an administrative decision. Regardless, the chairman's ability to build consensus is important for all administrative decision- making. A chairman who does not enjoy the support of at least half of his or her colleagues can face a battle over any action they initiate.

The statutory override provision makes it imperative for the chairman to consult with the other commissioners in performing administrative functions. In practice, the chairman consults with commissioners on some administrative matters, but differs with them over what consultation means. Commissioners view consultation as consensus building, while the chairman views it as nonbinding advice seeking.

According to the ITC General Counsel, the commissioners' authority to disapprove administrative actions implies they will be apprised of such actions. However, the level of consultation is generally left to the chairman's judgment. The ITC General Counsel has concluded that prior notice and opportunity to disapprove every administrative action by the chairman would undermine the purpose of the 1977 amendments to disengage the whole commission from involvement in ordinary administrative functions. Accordingly, the commission has devised an informal system of notification and "pre-approval" where appropriate.[1]

Commissioners monitor the chairman's day-to-day administration of the agency. Since August 1986, commissioners have received a weekly activity report from the staff that covers budget, personnel, and procurement decisions, including many delegated from the chairman to the staff. Through these reports commissioners can follow the status of funds, changes in the expenditure plan, all personnel changes for GS-13 level employees and above, the status of all staff detailed to and from the agency, all service contracts for experts and consultants, and all purchases above $10,000.

[1] Some actions are submitted for "pre-approval" because they cannot be legally undone. For example, civil service protection can prevent the commission from overriding certain decisions. Therefore, the chairman notifies the commission of the intent to make a decision in order to preserve their opportunity to exercise their authority.

The Staff Are Affected

Unresolved commission-level conflict over the allocation of resources affects the agency's management. Through the budget the commission provides the staff general guidance to use resources and monitors many administrative activities. At the same time the chairman provides day-to-day direction to the staff. The staff receive conflicting directions when there is no consensus. For example, the chairman sometimes opposes an approved budget and then is responsible for implementing it as the administrative head of the agency. The chairman can decide not to take certain actions because he or she alone has the power to initiate administrative actions.

The staff can be caught in the middle of a commission-level dispute because they try to respond to any concern and request for information. For example, commissioners ask the staff to prepare alternative budget proposals to replace the chairman's proposal. Having to please six contending commissioners is more difficult than having to please a single chairman.

Not only do commissioners ask the staff for information, but also they sometimes directly instruct the staff to take actions that the chairman considers to be administrative. Incidents have arisen because of questions about who has the legal authority to direct the staff. When a chairman and other commissioners both try to exercise control, the staff are placed in an awkward position by the conflict, and the operations suffer.

During commission-level conflict over administrative decisions, staff actions can appear to be favorable to one side and against the other. As a result, some senior officials told us that they must go to all six commissioners and "sell" a proposal or face automatic opposition. Another staff response has been not to make any proposals in order to avoid such controversy. In addition, we were told that the ITC chairman's 2-year term contributes to administrative problems by allowing staff to delay and "wait out" a chairman.

Formulating the Budget Sows Disagreement

Commissioners and the chairman have differed over the amount and allocation of resources to be requested from the Congress. These differences, both large and small, have not always been resolved amicably, despite meeting statutory deadlines. At times they have generated great debate and split votes that have threatened the collegiality of the commission.

The commission's success in reaching a consensus before the annual budget meeting has been mixed. For example, for fiscal year 1990 the commission reached a consensus before the budget meeting, and the formal vote yielded a 6-to-0 approval with almost no debate. However, the lack of consensus in other years meant that commissioners reluctantly reached agreement only at the last minute. According to agency officials, disagreements over the budget have created acrimony and distrust that have lasted for years. Over the years, different chairmen have reluctantly compromised to get a budget approved within the statutory deadlines. While they continued to disagree with the other commissioners, they felt "held hostage" by their responsibility to send an approved budget to the Congress on time. Other commissioners have complained about the unwillingness of the chairmen to compromise. They also complained that chairmen had sought votes on unacceptable budget proposals at the annual budget meeting.

Time spent on reaching agreement on budget issues has left less time for substantive work. Since the 1977 amendments, senior staff have observed that commissioners have shown greater interest and participated more in the budget process over the last few years. The Chairman and some commissioners have said they spend much of their time working on these issues during the budget formulation process. Commissioners said their active participation in budget formulation has reflected different priorities, not a concern about specific management problems.

It is not unusual for the commission to reject the chairman's budget proposal and introduce a substitute proposal. For example, the fiscal year 1989 final budget approval took the commission three votes and almost 10 hours of discussion over three sessions spanning 9 days. During the formal meetings, commissioners questioned almost every senior staff member. After this lengthy effort, the budget approved by the commission increased the total budget request 2 percent over the chairman's proposal, from $37.455 million to $38.110 million, changed some funding allocations, and changed the chairman's staffing plan 2 percent by decreasing the number of planned personnel vacancies, from 22 to 10 (out of 502 positions). The commission's 5-to-0 final consensus was reached only at the last minute because of the lack of compromise.

Commissioners have used their authority in the budget process to initiate administrative actions that could otherwise only be initiated by the chairman. These actions have involved major administrative changes. For example, in approving the fiscal year 1991 budget, commissioners initiated

a reorganization over the objections of the Chairman and some senior staff. Reorganization issues are discussed in the following sections.

The other commissioners have also used the budget process to limit the chairman's discretion in administering the agency. For example, while approving the number of temporary employees in the fiscal year 1991 budget's staffing plan, commissioners added a detailed footnote requiring commission approval of certain staffing decisions. The commissioners were concerned about potential abuse in the use of temporary employees by the chairman and sought to prevent the chairman from using too many in any one office. ITC documents show that implementation of this footnote requires the staff to monitor each temporary employee's hourly time charges during every 2-week pay period.

No consensus was reached before the fiscal year 1992 budget meeting. In fact, the chairman, who is responsible for executing the budget, was not part of the majority that approved it. The chairman unsuccessfully sought to reverse the reorganization approved by the commission in the previous year. The Chairman's proposal was rejected. In addition, the commissioners made additional minor changes. Their substitute proposal increased travel funds by $15,000 (2 percent), retained (but did not fund) 10 positions the Chairman sought to eliminate, and deleted a proposed reallocation of an additional position to two individual offices.

Commissioners Debate Their Budget Execution Responsibilities

When the chairman's authority to execute the budget and the other commissioners' authority to approve formulation of the budget appear to overlap, responsibility remains ambiguous. Over the years the chairmen and other commissioners have disagreed about their proper roles. The ITC General Counsel has concluded, however, that neither the chairman's nor the commissioners' authority can be interpreted so as to void the authority of the other.

The commissioners' debate over budgetary decision-making reached an impasse in the execution of the fiscal year 1991 budget. Even though there was no difference over the allocation of funds, the question of who approves the allocation caused great debate. A "final" appropriation from the Congress was delayed, creating uncertainty at ITC about the amounts that would be made available for spending. The Chairman sought to maintain discretion in allocating funds during this period of uncertainty and did not circulate an expenditure plan. Because the Chairman directed ITC staff to allocate funds temporarily based on a modified fiscal year 1990

expenditure plan rather than the fiscal year 1991 budget proposal, some commissioners believed the Chairman had stepped beyond existing authority and had not received approval from the commission for those actions as required by the statute. The commission sought to exercise their authority and wanted a vote on an amended fiscal year 1991 budget.

While the Chairman and the other commissioners eventually reached a compromise, the questions about their authority are unresolved. In a paradoxical compromise, the Chairman circulated what she called an expenditure plan as an administrative action for potential override. The other commissioners approved this document and called their action a vote on an amended budget. Similar compromises have occurred in other years after debates over decision-making authority.

The commission's role in budget formulation is more clearly established than in budget execution. As a result, the other commissioners have attempted to use their budget authority to require the chairman to submit expenditure plans for approval and to define the chairman's discretion in executing the budget. For example, the approved fiscal year 1991 budget and fiscal year 1990 expenditure plan included a footnote requiring commission approval of an amended budget/expenditure plan once the Congress appropriated funds.

Because the Chairman continued to disagree with other commissioners and the General Counsel about the interpretation of the statute, the Chairman sought an opinion from the Office of Legal Counsel in the Department of Justice. However, the ITC General Counsel has taken the position that any opinion, including her own, would not be binding on the commission.

Personnel Management Decisions Are Prolonged

Commission divisiveness about personnel management was one reason that the Congress redefined administrative responsibilities in 1977. While the agency took actions to improve this administrative area, we found some problems remain. ITC staff members told us that decisions about upper-level personnel continue to be contentious. Some personnel selections take over a year to fill because of differences between the chairman and other commissioners. Also, because of their statutory override authority, commissioners sometimes get involved in other day-to-day personnel management issues.

The chairman and the commission have overlapping responsibility for deciding personnel issues. The overall employment ceiling is determined

by the commission as part of the budget process. Through the expenditure plan, the chairman determines the internal allocation of these positions to each office. The other commissioners monitor these decisions. The chairman delegates most personnel decisions to senior managers. However, the chairman retains authority to select or approve individuals to fill the most senior-level positions (i.e., GS-15 and above). By statute, the removal of any senior employee requires commission approval.

The chairman selects individuals for positions in the agency, subject to an override by a commission majority.[2] The chairman may either announce an intent to choose a certain individual so that commissioners can approve (i.e., not override) the decision or announce a decision after the fact, if the selection is not likely to be controversial. The chairman sometimes invites the commissioners to interview the nominee. Commissioner involvement in selecting officials for Senior Executive Service positions is more direct and formal. For example, the vice chairman and another commissioner sit on the ITC's Executive Resources Board that sets qualifications, and rates and recommends individuals for the chairman's selection.

We found that selecting senior-level officials can take a long time because of differences at the commission level. It has taken an average of about 240 days (almost 8 months) to fill each of the 18 senior positions opened since 1983. The selection process has ranged from about 37 days to over 800 days. About one-third of the selections took more than 9 months, including more than one-fifth that took well over a year. In the meantime, temporary promotions and transfers were used to carry out the duties assigned to those positions. The chairman, other commissioners, and staff have expressed concern over how long these vacancies have remained unfilled.

The Chairman believes that the current decision-making process, which makes all selections subject to commission override, is tantamount to a group decision. As a result, when there are differences over the best candidate, chairmen have sometimes waited before making a choice to counter the potential for commission override. This process has delayed filling vacancies. Our interviews with ITC officials and review of documents indicate that promotions and appointments have sometimes been the result of trade-offs between the chairman and commissioners over other administrative decisions.

[2]The personal staff (four) of each commissioner are by statute independently chosen and supervised by that commissioner and are therefore outside of a chairman's authority.

Commissioners told us they are very interested in personnel selections because of the important effect they have on how the agency operates. Commissioners are generally concerned that a chairman may choose individuals whose views will bias the agency's work. In fact, commissioners have overridden and/or threatened to override chairman's selections. Furthermore, commissioners expect to be involved in the selection process, and disputes have occurred when they believed they were not adequately consulted. They have sometimes asked to review all applications for a position. Commissioners have sometimes written the chairman advocating that the chairman choose a certain individual. Their interest has extended to some selections for lower-level positions as well.

Some commissioners are also active in other personnel management issues. For example, we found that commissioners have reviewed and sought to modify vacancy announcements and position recruitment plans. Commissioners have also overridden such day-to-day personnel decisions. For example, the commission overturned the chairman's decision to recruit outside the agency because they felt a certain employee should be promoted to the position.

Organization Issues Go Unresolved

Both the chairman and the commission make administrative decisions about the creation, elimination, or shifting of staff responsibilities. The ITC's statute does not specifically define how (re)organization decisions should be made. As a result, some changes are made by the chairman as administrative decisions subject to commission override, and some are made by the commission within the budget process.

Because of this ambiguity, decision-making responsibilities overlap, and commission-level conflict over organizational issues has slowed decisions and created uncertainty that adversely affects staff morale, we were told. In some instances, the commission has rejected a chairman's decisions. In others, the other commissioners have used the power to initiate actions in the budget process to make changes themselves, over the objections of the chairman and some senior staff. Commissioners have been involved in organizational decision-making by reviewing the basis for the chairman's decisions. The need for group, rather than individual, support of each proposal takes time. Even when a chairman's decision goes forward and is not overridden, a lack of commission consensus can cause staff to receive conflicting guidance about what actions to take.

Staff Get Conflicting Direction From the Chairman and the Commission

A long-standing organizational issue concerns whether the Office of Economics or the Office of Investigations should supervise the 15 economists who contribute to injury studies led by investigators. Supervision was organized according to professional discipline. We were told that no specific management problems existed, even though the issue of moving the economists to the Office of Investigations had been raised in 1986.

A commissioner proposed the reorganization in 1989 during consideration of improvements to the agency's information resource management. The chairman opposed the reorganization, and no changes were made. The reorganization was again proposed later that year during the budget formulation process in an office director's funding request. The chairman and senior staff disagreed with the change and did not include it in the final budget proposal to the commission.

Commissioners subsequently used their broader authority in the budget process to initiate the reorganization. Although commissioners discussed this change with some staff during an in-depth review of the chairman's budget proposal, the chairman and senior staff were surprised by the commission's decision to add a footnote to the fiscal year 1991 budget and fiscal year 1990 expenditure plan affecting the reorganization. We were told that deciding these issues increased conflict and added time to the budget process.

While the economists now report to the Office of Investigations, to date, the chairman has refused to fully implement the reorganization by physically relocating the affected staff. One commissioner considers this refusal an abuse of the chairman's administrative power. The chairman unsuccessfully tried to undo the reorganization decision the following year during the fiscal year 1992 budget process. The dispute remains unresolved even though both sides believe the uncertainty of the situation damages the staff's work.

Improving Information Resource Management

Another example of how overlapping responsibility affects management involved the consolidation of information resource management (IRM). The chairman's office initiated the reorganization effort in response to our 1987 observation that the agency's organizational and management struc-

ture for IRM was fragmented and did not comply with statute or executive order.[3] The decision-making process took almost 3 years, from February 1987 until December 1989. Two factors delayed the IRM reorganization. First, the chairman desired a consensus before making a final decision. Second, active commissioner involvement and postponements in approving the decision added time. Eventually the reorganization established an Office of Information Resources Management to report to the Director of Administration.

The Chairman solicited comments from commissioners and staff throughout the process and obtained impartial outside reviews of proposals. As a result, other commissioners were very involved in the decision-making process. For example, they submitted comments on various proposals and studies, and they independently solicited staff input.

The Chairman unsuccessfully sought commission approval on three occasions in the summer of 1989, including the fiscal year 1991 budget exercise. As a result, the chairman stopped seeking commission approval, and instead made a unilateral decision in November 1989. This decision was an administrative action and was not overridden by the other commissioners. The decision mirrored the chairman's original proposal, but her efforts to build consensus added nearly 2 months to the decision process. Staff observed that some of this delay was due to conflicts over budget and personnel issues that were occurring at the same time, making consensus difficult to achieve.

Establishing an Office of Inspector General Was Difficult

The creation of an Office of Inspector General (IG) has been another area in which administrative decision-making has caused problems and conflict among the commissioners. The Inspector General Act Amendments of 1988 required that ITC establish an Inspector General function to direct and carry out audits and investigations of commission programs and operations.[4] However, while ITC met the statutory deadline, difficulty in interpreting statutory responsibilities caused delays in implementing the new act.

The act provides that the IG shall report to the head of the agency, but the chairman and other commissioners debated to whom the IG should report. The ITC General Counsel interpreted the new act as identifying the

[3]See International Trade: Observations on the Operations of the International Trade Commission (GAO/NSIAD-87-80, Feb. 25, 1987).

[4]Public Law 100-504 (Oct. 1988).

chairman as administrative head of the agency. However, both sides continued to differ because of the ambiguous relationship of the chairman and the other commissioners created by the ITC statute's override provision. The Chairman believed that the IG should report to the chairman's office alone, while other commissioners believed that the IG should report to the entire commission because the override provision made them ultimately responsible for ITC administration. The controversy led to the other commissioners' overriding the chairman's administrative order implementing the new statute and depicting the IG in an organization chart as reporting only to the chairman.

While this issue was settled with the IG reporting to the chairman, other differences persisted about the IG's resources and duties. Once the IG office was established in February 1989, the commission debated the proper amount of resources to give the IG. Because they did not believe that additional resources were warranted, other commissioners did not approve the Chairman's budget proposals to give the IG office a third permanent staff position, although many unused positions were available agencywide within existing budget authority. After our report[5] prompted a congressional inquiry about the lack of adequate resources, the Chairman replied,

> As Chairman and administrative head of the agency, I am responsible under the provisions of the Act for ensuring that the Inspector General has sufficient resources. However, because the statute provides that all administrative matters are subject to the override of a majority of the Commissioners and provides that the annual budget be approved by a Commission majority, I have not been able to fully carry out this responsibility.

After further congressional expressions of concern and a request for further action, an additional permanent position was approved by the commission in the budget for fiscal year 1992. The other commissioners agreed not to override the Chairman's administrative action allowing an unused permanent position to the IG office for fiscal year 1991 (a year early). However, they stipulated certain conditions that could limit its cost and could restrict the IG's future contracting for outside audit services and the IG's use of any temporary employees. This third position was approved in February 1991, almost 9 months after the first congressional inquiry.

Establishing the day-to-day duties and responsibilities of the IG has been an additional area of concern that has taken time and energy to resolve. For example, other commissioners overrode the Chairman's designation of the IG as liaison to our agency. Instead, based on the consensus of the

[5]See Inspectors General: Progress in Establishing OIGs at Designated Federal Entities (GAO/AFMD-90-46, Apr. 24, 1990).

commissioners, this coordinating responsibility was transferred to the Director of Administration more than 1 month after we had been notified of the Chairman's first decision. Also, approval of an internal directive on audit follow-up required negotiations between commissioners' offices and senior staff. It took over 3 months to resolve concerns about the commissioners' access to information and ability to override related decisions.

Chapter 4

Comparison With Other Commissions and Options for Improving ITC Administration

Our review found that the ITC's structure is unique compared to 15 other major commissions regarding the way in which it balances power between the chairman and the other commissioners. ITC is one of only three commissions that have an even number of members. Its members serve the longest terms of office (9 years), and ITC is one of two commissions with limits on a commissioner's reappointment. Also, the ITC chairmanship's fixed, 2-year term and specific rules about rotating political party affiliation make the position the most constrained. Typically, a commission has an odd number of members with no more than a simple majority from the same party; its members serve 5-year terms, but may be reappointed. The President selec[illegible] he chairman for a term with no additional limit or requirei[illegible] about political affiliation.

Like ITC, the chairmen at most commissions we reviewed are primarily responsible for the administration of their respective agencies. While other commissioners are involved in administration at most agencies, their statutory role and their level of involvement differs from agency to agency. Officials at most agencies told us that commissioners spend, on average, less than 10 percent of their time on administrative matters and characterized their involvement as low. We found that the statutes generally establish how administrative decisions are made. However, statutes are flexible, allowing for various interpretations and ways to implement the same or similar statutory language. Appendix I elaborates on the characteristics of the 16 commissions we reviewed.

The ITC Chairman's Authority Is Relatively Limited

The ITC chairman's statutory authority to administer the agency is limited compared to that of other commission chairmen. We categorized the commissions into four broad groups (broad, moderate, limited, and undefined) based on the chairman's statutory authority to unilaterally make administrative decisions (see table I.2 in app. I). Chairmen in three of the agencies surveyed, including ITC, have more constraints than the chairmen of other commissions. This "limited" category means approval and/or support of a commission majority is required for decisions in all three major administrative areas: budget decisions, personnel decisions, and reorganization decisions.

The ITC chairman's statutory authority is even more limited than others in the same category because the other ITC commissioners can disapprove any administrative decision the chairman makes. This override provision is unique to ITC. In other agencies, authority of other commissioners, if it exists at all, is usually confined to approval of the budget, senior personnel

hiring, and maajor reorganizations. Other administrative decisions are left to the chairman and/or other agency officials.

Budget Decisions

Statutory limitations on the chairman's budget decisions exist in half of the agencies, including ITC. Among these, there are variations in the statutes' language, but only the ITC's statute specifically refers to a commission role in "budget formulation." Other commissioners' approval of the chairman's budget is more common in practice than explicitly required by statute. Chairmen at 11 of the 16 commissions we reviewed obtain some form of commission approval of their agencies' budget submission to the Office of Management and Budget and/or Congress.[1] However, within these agencies, other commissioners' involvement in budget formulation decisions range from intense participation to minimal informal review.

Commissioners' roles in budget execution after funds have been appropriated are different at each agency. At many, commissioners have little involvement. One commission appears to have its members at least as involved as ITC, and they meet quarterly to approve the reprogramming of funds.

Personnel Decisions

For 10 of the 16 commissions we surveyed, the Congress has placed some statutory limitation on the chairmen's authority for appointing agency personnel. However, at 6 of these 10 commissions requiring other commissioners' approval, this limitation applies only to senior-level appointments by the chairman. At 3 of the 10, commissioners must approve all personnel appointments; at ITC, all personnel appointments are subject to commission disapproval.

Organizational Decisions

At the other commissions, explicit limitation of the chairmen's authority to reorganize the agency is not common; in only two cases are such limitations written into the statute. In practice, reorganizations entail shifting personnel and, in some cases, creating or eliminating functions. These decisions are, therefore, often linked to broader budget and personnel decisions. At some agencies, commissioners approve reorganizations because these reorganizations impinge on other administrative issues in which commissioners play a role. At ITC, this limitation is implicit in the provision for commission override.

[1] ITC is one of several commissions whose budget request is submitted to the Congress without revision by the President.

Consultation Among Commissioners

Consultation between the chairman and commissioners is an important element in administrative decision-making. Regardless of requirements for commission approval, officials at each of the 16 commissions we surveyed noted that some consultation occurs. Aside from a statutory requirement to do so, chairmen consult with other commissioners for a variety of reasons, for example, to inform, build consensus, or seek advice.

Officials at many commissions told us that the personality and leadership style of a chairman affects administrative decision-making. Some officials added that personality conflicts between a chairman and the other commissioners can make administrative problems particularly difficult to resolve.

Administrative Decisions Are Disputed More Often at ITC

Compared to the 15 other commissions surveyed, the relationship between the chairman and the other commissioners at ITC appears to be one of the most argumentative. It is one of three that experienced disputes in all three broad administrative areas over the last several years.[2] Like ITC, these two other agencies have called in outside entities to help resolve administrative disputes.

Dissension over some administrative matters has occurred at most commissions we surveyed whenever group decision-making was involved. Still, a commission role in administrative decision-making does not always engender dispute. At the 12 agencies where some commissioner approval is required and/or obtained for administrative decisions, 9 indicated that they have experienced some disputes.

Major disputes over the budget have only occurred at four other commissions besides ITC. These disputes have resulted in such things as commissioners' (1) submitting formal dissents with the agency's annual budget request to the Congress and Office of Management and Budget and (2) voting down the chairman's proposed budget.

Disputes over personnel decisions also vary from agency to agency. At 8 of the 16 commissions, major appointments, such as the general counsel, have been held up for months and even years due to commissioner-level conflict. In two of the eight agencies as well as ITC, a chairman's selection has been rejected outright.

[2] Disputes are commissioner disagreements, arguments, and debate over administrative matters that publicly challenge decisions of the administrative head of the agency.

Options Exist for Clarifying Administrative Decision-Making

We reviewed some options that might allow administrative authority and responsibilities to be more clearly understood. These options consider the legislative history of the 1977 amendments. The history shows that the Congress intended the chairman to have responsibility for day-to-day administrative decisions for effective management, while the other commissioners were to have a role in making major decisions in order to preserve independence and objectivity. Our analysis of various options is discussed in the following sections.

The ITC's Structure Could Be Changed

The general power of the ITC chairman could be enhanced. A more powerful chairman would theoretically receive fewer challenges by other commissioners regarding administrative decisions and could more forcefully guide ITC staff. Problems stemming from commission-level dispute over administrative decisions might be lessened if the chairman were given more responsibility in resolving them. This problem could be solved by making the ITC's structure more like other commissions while keeping the current administrative decision-making responsibilities the same. For example, the chairman's term of office could be lengthened, and the requirements for seniority and/or rotating political affiliation could be removed. In addition, the number and political composition of the commission could be changed to an odd, rather than an even, number, and the requirement for political balance removed.

These changes to the ITC's structure, however, would not be limited to administrative matters, and they might have a profound effect on substantive decision-making. In the past, the Congress has been concerned that a more powerful chairman would reduce the independence of ITC by giving the chairman and/or the President too much influence. Many of the ITC's statutory provisions are unique. The Congress chose to make neither the ITC chairman's selection nor the commission's composition like those of other agencies. Moreover, based on our survey of other commissions, adopting a different structure might not eliminate problems in making administrative decisions.

Unique Administrative Provisions Could Be Replaced

The ITC's statute could be amended to make its administrative provisions more like other commissions. If administrative responsibilities were better defined, ambiguities over the chairman's and other commissioners' responsibilities for administration would be reduced. The ITC's all-encompassing override provision is unique. Instead, at many other agencies, certain decisions made by the chairmen take effect only after commission

approval. However, the scope of such approval provisions ranges widely among agencies. Some chairmen enjoy broad administrative authority, while others are limited.

The ITC statute's override provision could be replaced with one for commission approval of certain decisions, similar to those found in other agencies' statutes. Commissioners could still have involvement in all three administrative areas. The ITC chairman's authority would remain relatively limited consistent with the purpose of the 1977 amendments. Specifically, commission approval could be required for the chairman's selection of designated senior positions and for certain reorganizations. The commissioners' approval of the budget is already required.

On the other hand, replacing the override provision would reduce the scope of the commissioners' responsibility by eliminating their authority over other decisions, such as lower-level personnel selections, minor reorganizations, and procurement.

While a chairman's authority to make day-to-day decisions would be strengthened, the chairman's role in major administrative decisions would be more limited under this option. A chairman's decision would need a positive vote by a majority of the commission rather than being subject to a potential veto by a majority of the commission. In essence, this change would mean that a chairman's decision would need the support of three other commissioners rather than two, as currently required.

Budget Roles Could Be Better Defined

Responsibilities for both budget formulation and execution could be clarified. The legislative history of the 1977 amendments states that ITC commissioners should "agree in broad terms on the magnitude of the resources to be sought and the general priorities to be assigned to the utilization of these resources." However, we found that ITC commissioners were involved in very specific budget execution issues.

The ITC's statutory provision for the commission's approval of its budget could be amended to eliminate questions about where the chairman's responsibility ends and the other commissioners' begins. Debate over procedural issues could be lessened. For example, replacing the provision for commission approval of the chairman's budget "formulation" with one for approval of the ITC's budget submission to the Congress would limit debate to a proposal with a broad level of detail and at a specific point in the process. This change would remove uncertainty about responsibility for

budget execution. For example, the other commissioners' role could be limited to a vote on the chairman's planned allocation of funds appropriated by the Congress (as captured in the expenditure plan), or such decisions could be left to the chairman's discretion.

An Executive Director Could Be Created

An executive director position could be created to manage the ITC's day-to-day administrative matters. An executive director would be placed between the commission and the senior staff and would make administrative decisions. Thirteen of the other commissions we surveyed have an executive director, and almost half of these positions are statutorily mandated. We found that from agency to agency the position was given a wide range of decision-making responsibilities, including budget formulation and execution and personnel selections. In one case, the executive director is the de facto administrative head of the agency and is responsible for making all administrative decisions, subject to commission approval.

Creating an executive director position at ITC would not necessarily end problems in administrative decision-making, however. We found that despite the existence of an executive director, 7 of the 13 commissions experienced administrative disputes in some area. Commissioners still approve certain decisions; executive directors are often the chairman's representative, and disputes can occur over a delegated decision. ITC had such a position for several years before 1977, but it was eliminated and responsibilities were divided between the current Director of Administration and the Director of Operations. Creating an executive director position would be unlikely to have any effect unless other changes were made to clarify or remove commission approval of administrative decisions. Otherwise, creating this position would only add a layer of responsibility to ITC and transfer the initial focus of all commission-level disagreement onto a subordinate.

Matters for Congressional Consideration

Changes to make the ITC's administrative decision-making more efficient and less argumentative can be made without threatening the independence and objectivity of the agency's substantive work. Some of the options we reviewed appear to address the root cause of the ITC's problems better than others. The Congress may want to consider replacing the commission's current statutory administrative override authority with a requirement for commission approval of a chairman's appointment of senior personnel and of a chairman's creation, elimination, or movement of offices. Also, the

Congress might clarify statutory language that defines the budget and give the chairman responsibility for the expenditure of appropriated funds within the broad guidelines approved by the commission in its budget request.

Agency Comments and Our Evaluation

The Acting Chairman and a group of three other commissioners provided two different sets of comments on a draft of our report (see app. II and III). The Acting Chairman and the other commissioners strongly disagreed with each other about the need to change administrative authority at ITC. None of the three other commissioners was ever Chairman.

The Acting Chairman agreed with our characterization of the problems at ITC. She thought that other commissioners' actions were contrary to what the Congress intended in its 1977 amendments of the ITC's statute. She believed that the chairman's authority needs to be substantially strengthened, and her suggestions went beyond the changes we suggest the Congress consider; the Acting Chairman would eliminate rather than replace the override provision and make budget requests and the termination of senior employees subject to commission disapproval, rather than approval.

The three other commissioners did not dispute any of the facts we present. However, they disagreed with our conclusions and felt there were no problems that require legislative changes. They believed that any disagreements over administrative decisions were the chairmen's fault for not adequately seeking a majority consensus. More specifically, they contended that the conditions described in our report should not be considered as problems because ITC had consistently fulfilled its statutory responsibilities. The other commissioners said that the ITC's statute was not ambiguous and that their override authority was essential to preserving the ITC's independence because of the chairman's additional power to administer the agency. They stated that chairmen's personalities and leadership styles and the politics surrounding substantive work were of paramount importance in accounting for recent conditions at ITC.

The comments of the Acting Chairman and the group of three other commissioners exemplify the divergent interpretations of the ITC's statute and the ensuing debates. They confirm the need for external guidance to resolve their differences. The Acting Chairman sees administrative decisions as the chairman's responsibility, with little to no involvement of other commissioners; the other commissioners see administrative decisions as requiring consensus and their active participation through the checks and

balances of the override and budget provisions. Resolving the ambiguity in administrative responsibilities while maintaining some checks and balances will improve the ITC's management.

We also received technical comments from senior ITC staff and considered their clarifications and corrections in the report where appropriate.

Comparison of Commissions

We compared the International Trade Commission (ITC) to 15 other commissions. Specifically, we compared each commission's (1) structure in terms of membership and the chairmanship, (2) statute concerning administrative authority and actual administrative practices, and (3) conflict over administrative decisions. We also focused on three administrative issue areas: budget decisions, personnel decisions, and reorganization decisions. We reviewed the following 16 agencies:

- Commission on Civil Rights (CCR)
- Commodity Futures Trading Commission (CFTC)
- Consumer Product Safety Commission (CPSC)
- Equal Employment Opportunity Commission (EEOC)
- Federal Communications Commission (FCC)
- Federal Elections Commission (FEC)
- Federal Energy Regulatory Commission (FERC)
- Federal Maritime Commission (FMC)
- Federal Mine Safety Health Review Commission (FMSHRC)
- Federal Trade Commission (FTC)
- Interstate Commerce Commission (ICC)
- International Trade Commission (ITC)
- National Labor Relations Board (NLRB)
- Nuclear Regulatory Commission (NRC)
- National Transportation Safety Board (NTSB)
- Securities and Exchange Commission (SEC).

The Structure of Commissions

Commissions range widely in size and budget but have many common features in their structure. Most commissions have five members (an odd number) with a requirement that no more than three be from the same political party. This requirement usually means that the chairman will have a working majority. Most commissioners' terms are for 5 years, and they may be reappointed. The President usually selects the chairman, for a term limited only by his or her term as a commissioner, or until replaced by the President. The chairman is usually responsible for the commission's executive and administrative functions.

A chairman is usually the ultimate decision-maker on administrative issues. While other commissioners are involved in administration at most agencies, the level of their involvement varies from agency to agency. Most commissions rely on a staff and an executive director to help manage the agency. On substantive matters (regulatory or policy issues) the entire commission is the responsible decision-maker; the chairman is one among

equals. Agency substantive decisions are made by a majority vote of the commissioners.

Table I.1: Comparison of Commission Structures

Agency	Number of members	Limit on number from same political party	Length of term (years)	Possible reappointment	Chairman appointed by	Limit on term
CCR	8[a]	No more than 4	6	Yes	President & Commission	None
CFTC	5	No more than 3	5	Yes	President & Senate	None
CPSC	5[b]	No more than 3	7	Yes	President & Senate	None
EEOC	5	No more than 3	5	Yes	President	None
FCC	5	No more than 3	5	Yes	President	None
FEC	6	No more than 3	6	Yes	Commission	1 year
FERC	5	No more than 3	5	No	President	None
FMC	5	No more than 3	5	Yes	President	None
FMSHRC	5	None	6	Yes	President	None
FTC	5	No more than 3	7	Yes	President	None
ICC	5	No more than 3	5	Yes	President	None
ITC	6	No more than 3	9	No[c]	President	2 years[d]
NLRB	5	None	5	Yes	President	None
NTSB	5	No more than 3	5	Yes	President & Senate	2 years
NRC	5	No more than 3	5	Yes	President	None
SEC	5	No more than 3	5	Yes	President	None

[a]Four appointed by the President, two by the Senate, and two by the House.

[b]Since 1986 only three commissioner positions have been funded by the Congress.

[c]Any commissioner appointed to fill an unfinished term of less than 5 years may be reappointed to a new full term.

[d]Political affiliation of chairmen must alternate.

Administrative Decision-Making Authority

Statutes generally designate the administrative head of the agency and describe how administrative decisions are to be made. We found that statutes vary widely in how they define administrative responsibilities.[1] While most statutes make the chairman administrative head of the agency, the statutory language of only 3 of the 16 agencies reviewed is the same.[2] The statutory language establishing their administrative authority also differs

[1]Four agencies (FMC, FTC, NRC, and SEC) are also governed by Executive Branch Reorganization Plans.

[2]Three commissions' statutes do not mention any administrative responsibilities for the chairman (FEC, CCR, NLRB).

widely. In some cases the statute delineates specific responsibilities, such as NRC. Other statutes make little mention of specific areas of administration, as at EEOC.

Statutes usually balance the chairman's administrative power by reserving some administrative authority to the other commissioners. This balance is established in several ways. In eight agencies' statutes, some administrative decisions made by the chairman are subject to commission approval; in five others, certain decisions must be made by the commissioners. Some statutes (like those of CFTC, FTC, and SEC) mix these two approaches. Also, the scope of administrative responsibilities given commissions ranges from responsibility in all three administrative areas (FCC, NRC) to no assigned authority (EEOC, FERC, FMC, and NTSB). The scope provided by the override provision is unique to ITC.

Commissioners' authority over administrative decisions amounts to a limitation on the general authority given the chairman. To compare statutory authority, we categorized agencies into four groups, defined by the number of limitations on the chairman's authority as explicitly mentioned in the statute. The "broad," "moderate," and "limited" categories encompass agencies where the chairman is the administrative head of the agency. The "undefined" category indicates that the chairman is not the administrative head of the agency (see table I.2).

The strength of each chairman's administrative authority varies from agency to agency. Chairmen in two of the commissions surveyed, in addition to ITC, have "limited" authority. Chairmen of five commissions have "broad" authority and no or one explicit statutory limitation. Limitations on the authority to appoint personnel are the most common, occurring in 10 agencies; specific limitations on reorganization authority are least common.

Table I.2: The Extent of 16 Chairmen's Statutory Administrative Authority

	Commissioners' role in decision-making			
Agency	Budget	Personnel	Reorganizations	Dispute over authority
Broad authority				
EEOC	No	No	No	No
FERC	No	No	No	No
FMC	No	No	No	No
NTSB	No	No	No	No
FMSHRC	No	Yes	No	No
Moderate authority				
CFTC	Yes	Yes	No	No
CPSC	Yes	Yes	No	Yes
FTC	Yes	Yes	No	Yes
ICC	Yes	Yes	No	Yes
SEC	Yes	Yes	No	No
Limited authority				
FCC	Yes	Yes	Yes	Yes
ITC	Yes	Yes[a]	No[a]	Yes
NRC	Yes	Yes	Yes	Yes
Undefined authority				
CCR	No	No[b]	No	Yes
FEC	No	Yes	No	Yes
NLRB	No	No	No	Yes

[a]The chairman's decisions are subject to commission disapproval.

[b]The commission must approve the President's selection of chairman and staff director.

Statutes Allow Flexibility in Practice

Commissions' statutes generally establish actual decision-making practices. However, the statutory language is sufficiently flexible to allow for different interpretations and implementation. We found various interpretations and implementation of administrative responsibilities among agencies even where statutory language was the same or similar. For example, SEC and FTC share the same statutory language regarding the budget. However, according to officials at SEC, commission approval of the budget is sought only if changes are made to the SEC's substantive programs. At FTC, formal commission approval is always sought regardless of the budget's effects on the agency's programs.

We found that sometimes a chairman will seek other commissioners' approval for major administrative decisions even though he or she is not required to do so. Such is the case at EEOC, where the chairman has broad authority to make all administrative decisions but obtains other commissioners' approval for the agency's annual budget submissions and for certain reorganizations. However, in this case the statute is silent on budget and reorganization matters, thus creating room for discretion about how to operate. Conversely, a chairman can exercise more power than expected. For example, we were told that at SEC, commissioners do not formally vote to approve certain administrative decisions.

Additional limitations are placed on the authority of the chairmen in nine agencies through a statutory provision subjecting their actions to the "general policies of the commission and by such regulatory decisions and determinations" established by the commission. According to officials in most of these commissions, such provisions have not been an issue in administering the agency. However, at two commissions (ICC and CPSC), officials said general policies have been adopted that affected the chairman's decision-making authority.

Also, commissions develop regulations or internal procedures for making administrative decisions that augment statutory provisions. In addition, two agencies where administration is not mentioned in the statute have developed their own administrative procedures in order to reach consensus. Responsibilities for budget approval at NLRB can be found, for instance, in its "Rules and Regulations and Statements of Procedure." CCR has also developed procedures regarding commission approval of administrative decisions.

All Commissions Have Some Disputes, but the Degree Varies

We found that commission-level dispute over administrative matters has occurred at most agencies. Individual disputes range from major conflicts to minor differences. However, the scope and amount of dispute differ from agency to agency. Disputes over personnel decisions (appointments of senior officials) seem to be most common, occurring in half of the agencies surveyed. Both budget- and reorganization-related conflicts occurred in five agencies.

We defined "dispute" as commissioner disagreements, arguments, and debate over administrative matters in a way that openly challenges decisions of the administrative head of the agency. For example, dissenting or alternative budgets sent to Congress, rejections of the chairman's

personnel appointments, and rejections of reorganization proposals are the most common types of administrative disputes.

Generally, the more statutory limitations on a chairman's administrative authority, the more likely some conflict would occur. At five agencies where the chairman has moderate authority and some commission approval is required, three have experienced problems. Disputes have occurred in all three agencies where the chairman has limited authority and the other commissioners participate in all areas of administrative decision-making. (Each of these administrative areas is discussed in the following sections.) Disputes also occurred in all three agencies where the chairman's administrative authority was not defined. However, commission involvement in an administrative area did not necessarily lead to disputes with the chairman. No dispute occurred at the five agencies where the chairman has broad power and can make administrative decisions unilaterally.

We found some commissions had more conflict than others. Only three agencies, CPSC, ICC, and ITC, experienced dispute in all three administrative areas during the last several years. Seven commissions did not experience any conflict over administrative matters, according to agency officials. Outside entities have been called in to settle administrative disputes. For example, at CPSC, one administrative reorganization decision was so contentious that the chairman and the commissioners called in the Department of Justice's Office of Legal Counsel to render an opinion on their decision-making authority in the dispute. Other commissions have only experienced conflict in one or two administrative areas.

Officials at seven agencies told us that the personality and leadership style of a chairman affected administrative decision-making. Some officials told us that personality conflicts between the chairman and the other commissioners make administrative problems particularly contentious. While we did not review personality and leadership style, these two factors are important in understanding why conflicts occur at agencies over administrative issues. Philosophical differences between commissioners over substantive issues affect administrative matters as well. For example, officials at NRC told us that when commissioners agreed philosophically, conflict did not occur on administrative matters.

In the following sections we compare statutory authority, actual agency practice, and disputes within commissions specifically related to budget, personnel, and organizational decisions.

Budget Decisions

Statutory limitations on the chairmen's budget control exist in half of the commissions we reviewed. Seven chairmen are given general authority over the use and expenditure of funds, but with some requirement for commissioners' approval. Variations exist in the language defining the limitation. Commission involvement in both budget estimates or requests to the Congress and budget implementation or execution is sometimes made explicit in statutes. However, the only specific reference made to "budget formulation" is in the ITC's statute.

Commission participation in the budget process is more common in practice than explicitly required in statutes. Chairmen at 11 agencies obtain commissioners' approval of their agency's budget submission to the Office of Management and Budget and the Congress. But how approval is received varies. For example, in contrast to a formal vote, approval at NRC and FCC is not formal but is reached through informal consensus of all commissioners. Agency budgets are usually formulated by the chairman or the executive director under the chairman's direction. Levels of commission involvement in budget formulation vary. CPSC commissioners, for example, have traditionally been deeply involved in budget formulation. Commissioners at EEOC, by contrast, vote only on a final proposal. According to officials at eight agencies, commissioners are involved in budget decisions more than in any other administrative issue.

Budget execution is also handled in different ways. Commissioners at FTC meet quarterly to approve the reprogramming of funds and requests for supplemental appropriations. Commissioners at FEC also vote on major reprogramming. Commissioners at SEC are not involved in budget execution at all. The SEC chairman approves an operating budget prepared by the managing director and reviews it after 6 months.

On budget matters, disputes between chairmen and commissioners tend to be major when they occur. Disputes range from major conflict in which, for example, some commissioners at CCR, CPSC, FTC, and ICC submitted formal dissents with the agency's annual budget request, to minor differences where small changes were made to a chairman's proposed budget. Major disputes over budget have occurred at five agencies (including ITC). However, minor differences between chairmen and commissioners are more common and have occurred at eight of the agencies. Disputes have not occurred at seven of eight agencies in which there is no statutory commissioner involvement (at four of these, commissioners are included in practice.)

Personnel Decisions

The most common statutory limits involve the chairmen's authority to appoint agency personnel. Again, the statutory language varies. Usually, the chairmen's selection is subject to approval by the commission but in some agencies the right to select is reserved to the commission. Of the 10 agencies requiring commission approval of the chairmen's selections, 6 restrict the commission's role to approving the heads of major administrative units (CFTC, CPSC, FTC, ICC, NRC, and SEC). Other statutes either reserve the authority to appoint personnel (not limited to the heads of major administrative units) to the whole commission, assign authority to other officials, or, in the ITC's case, make all personnel appointments subject to commission disapproval.

In practice, other commissioners' involvement with personnel decisions usually concerns only the appointment of senior officials. At CFTC, formal votes are taken on major personnel selections. However, at SEC, where the statutory language is the same as at the CFTC, the chairman does not obtain formal commission approval for appointments of the heads of major administrative units. Instead, officials told us, the chairman informally polls each commissioner on a selection and obtains a consensus; no formal vote is taken. In contrast, at FEC the commission approves the appointment of all agency employees regardless of grade level. Despite the greater prevalence of personnel limitations in statutes, officials at only five agencies told us that personnel is the one issue in which commissioners are most involved.

The incidence of dispute between a chairman and other commissioners over personnel matters also varies from agency to agency. At eight agencies some differences have occurred. For example, major appointments, such as the general counsel, have been held up for months, and even years, due to commission-level conflict. In four of the eight agencies, disputes have led to outright rejection of a chairman's selection.

Organizational Decisions

Explicit statutory limits on a chairman's authority to reorganize the agency are not common. In only two agencies (FCC and NRC) is commission approval of organizational changes written into the statute. At ITC it is implicit. Nevertheless, we found that practical limitations on reorganization decisions occur at 11 commissions. Obtaining other commissioners' approval occurs primarily for two reasons. First, because decision-making responsibility in the area is not explicit in most statutes, the commission can determine how such decisions are to be made. Second, reorganizations entail shifting personnel and creating or eliminating functions. These

decisions are often linked to budget and personnel decisions. For example, at EEOC votes are taken on reorganizations only if functions are created or eliminated. At FTC votes are taken only if a reorganization would change the agency's budget. Officials at only one agency noted that organizational issues were the area in which commissioners were most involved.

All Commissions Rely on Consultation

Consultation between a chairman and commissioners is an important element in administrative decision-making. Regardless of statutory requirements, officials at every agency surveyed noted that some consultation occurs at the commission level. Consultation may occur for a variety of reasons, including notification, consensus-building, obtaining advice, and seeking approval of a chairman's administrative decision.

At some agencies, a chairman is required, either by statute or by internal policy, to consult or notify the commission on a pending administrative decision. The FMC chairman, for example, is required by statute to consult with commissioners on the appointment of commission personnel even though they do not vote on the selection. The CPSC chairman is bound by internal policies to notify the commission of certain personnel and reorganization decisions. The fact that consultation occurs at every agency indicates that important decisions on administrative matters are not usually made by the chairman without commissioner knowledge.

Comments From Acting Chairman Brunsdale

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

CHAIRMAN

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

December 13, 1991

Mr. Frank C. Conahan
Assistant Comptroller General
National Security and International Affairs Division
General Accounting Office
Washington, D.C. 20548

Re: International Trade Commission: Administrative Authority Is Ambiguous (GAO Code 483559)

Dear Mr. Conahan:

I would like to thank you for the job you and your staff did on the report on administrative authority at the Commission. It all too accurately depicts the problems at the Commission, and I wish only to emphasize some of its points and offer some suggestions that would solve some of the problems.

I write with the benefit of unique experience, having served as chairman or acting chairman for three-and-a-half years. I believe my service in these roles is longer than any of my predecessors; with the passage of new legislation, it will certainly prove longer than any of my successors. I also am writing at the very end of my service as chairman and at the very beginning of a three-year Democratic chairmanship. My conclusion that the statute should be changed to strengthen the chairmanship is therefore not rooted in self-interest or partisan advantage. It reflects an honest desire to make the Commission work better for future chairmen, and to better realize the intent of Congress that the Commission devote its energies to the substantive work in international trade, and not to petty administrative disputes.

See comment 1.

This is not my view alone. As the conference committee that drafted the 1977 amendment wrote:

> It is the intention of the conferees in agreeing to this provision to enable the Commission to devote all its energies to substantive matters within the jurisdiction of the Commission, leaving responsibility for administration of the Commission to the Chairman and his delegates. The conferees believe that ending full Commission debate of administrative matters should result in more definitive majority decisions on matters of substance.

H. Conf. Rep. No. 95-518 at 7, 2 1977 U.S.C. Admin. N. at 1681.[1]

At the same time, Congress did not want to create a chairman so strong that he could influence the substantive decisions of the Commission. A chairman with absolute control over the budget or over the most senior staff members could indirectly reshape the substance of the Commission's decisions by depriving the other commissioners of the information, analysis, or resources they needed to make their decisions. This would in turn upset Congress's vision of the Commission as a nonpartisan and objective body. Representative Vanik summarized the intent of those who wrote the amendment:

---

[1] The 1977 amendment changed 19 U.S.C. Section 1331 to read:

> (a)(1) Except as provided in paragraph (22), the chairman of the Commission shall --
> (A) appoint and fix the compensation of such employees of the Commission as he deems necessary (other than the personal staff of each commissioner), including the secretary,
> (B) procure the services of experts and consultants in accordance with the provisions of section 3109 of Title 5, and
> (C) exercise and be responsible for all other administrative functions of the Commission.
> Any decision by the chairman under this paragraph shall be subject to disapproval by a majority vote of all the commissioners in office.
> (2) Subject to approval by a majority vote of all the commissioners in office, the chairman may --
> (A) terminate the employment of any supervisory employee of the Commission whose duties involve substantial personal responsibility for Commission matters and who is compensated at a rate equal to, or in excess of, the rate for grade GS-15 of the General Schedule in section 5332 of Title 5, and
> (B) formulate the annual budget of the Commission.

> It is hoped that it will end the present administrative deadlock, and at the same time preserve for the Commission as a whole those areas of responsibility most vital to its functioning as an objective independent Commission . . . Thus the following two kinds of actions by the chairman are subject to the approval of the Commission: First, the formulation of the annual budget of the Commission: and second, the discharge from a position of an employee with responsibility for supervising personnel, whose duties involve substantial personal responsibility for Commission matters, and who is a GS-15 or above.

Congressional Record, Aug. 4, 1977, at H8673.

As the report records so well, Congress's hopes have been only partly realized. The exercise of the Commission's administrative authority is better now than before the amendment. Nevertheless, intervening developments in the fourteen years since the amendment became law show that it now needs to be revisited. The most important of these has been the Commission's rapid discovery and use of the provisions that any and all administrative decisions by the chairman may be vetoed, and that the Commission's "budget" must be approved by majority vote. As your staff discovered, the provision granting a general veto is unique to federal independent agencies. In my experience, it has shifted the balance of power in a way that is subversive of Congress's intent to have commissioners devote "all their energies" to the Commission's substantive work, while not advancing at all Congress's interest in preserving the nonpartisan and objective character of the Commission's decisionmaking.

See comment 2.

One way to resolve the resulting ambiguities of administrative power at the Commission would be to reorganize it to resemble most other multi-member commissions or boards. The chairmanship could be a separate office and its term could be lengthened. The Commission could be given an odd number of commissioners and the requirement for rotation of the chairmanship between the parties could be removed. However, as your report notes, the effects of these sort of changes would not be confined "to administrative matters, and they might have a profound effect on substantive decision-making." This is not what Congress intended in making the 1977 amendments, and it is not something I now support.

Instead, I propose a different solution: Deletion of the last sentence of Section 1331(a)(1), and substitution for existing Section 1331(a)(2) the following:

> The chairman may, subject to disapproval by a majority vote of all the commissioners in office,
>
> (A) terminate the employment of any career member of the Senior Executive Service at the Commission; and
>
> (B) prepare the Commission's budget requests to Congress.

See comment 3.

This proposal would protect the commissioners from being deprived of the personnel and financial resources they need for their substantive work, while preventing their involvement in petty administrative disputes that do not affect either the substance of the Commission's work or its nonpartisan and objective character. This proposal would in particular resolve the budgetary and personnel problems that the report describes at length.

Congress's desire to centralize administrative decisionmaking in a chairman has been subverted over the last decade by the Commissioners' discovery of latent ambiguities in their authority over the "budget." As the report states, it was Congress's intent that the Commission "agree in broad terms on the magnitude of the resources to be sought and the general priorities to be assigned to the utilization of these resources." However, by requiring an affirmative majority to "formulate the annual budget" instead of allowing a majority to disapprove a budget request, a majority of commissioners may easily try to initiate administrative actions at even the lowest level in the guise of either amending the budget request or amending budget actions during the year as appropriations or sequesters occur. Limiting the majority's power to the disapproval of budget requests drafted by the Chairman would remove the potential for initiating administrative actions disguised as amendments.

It is important that a chairman have considerable support on the general limitations of the Commission's budget. By clarifying that it is the budget request, rather than the expenditure plan or cost center outline or individual spending decisions that must be voted on, my suggested revision would ensure that future chairmen have the flexibility to respond to changing conditions during the course of a fiscal year, whether those conditions take the form of sequesters, appropriations in amounts different from the budget request, or a decline in workload.

Failure to adopt this change would allow commissioners to continue attempts to micromanage the Commission's administration, and thereby not "devote all their energies" to the Commission's substantive work. As the report accurately describes, the current ambiguity has fostered use of the budget process to initiate administrative action, such as a reorganization of particular offices within the Commission. It has even been used

to subvert the plain language of the statute by requiring in a footnote, for example, approval by a Commission majority of certain staffing decisions, despite the language of Section 1331(a)(1)(A) granting the power to hire employees to the chairman subject to majority disapproval.

The unique provision allowing a majority of the Commission to override any administrative action can also have a paralyzing effect: Only the chairman can initiate administrative action, yet the threat of a veto can easily lead to a standoff. After naming one employee as the Commission's GAO liaison, for instance, I was vetoed by a majority who wanted another named instead. I was then told that anyone other than this employee would be vetoed too. A veto threat over a chairman's hiring decisions means that a chairman opposed by a majority must either surrender, leave the position vacant, or appoint the candidate he feels is best and allow the Commission to suffer the consequences of trying to discharge a civil servant without cause because a majority of the Commission exercises its veto. One result of standoffs of this kind is an average delay of eight or nine months in hiring senior staff.

Another result is that chairmen have to spend too much time brokering elaborate deals. A chairman might have to agree to award a bonus, create a slot for an additional hire, or undertake some special project in order to cobble together a veto-proof coalition in support of a particular administrative decision. To Commission employees who do not witness this maneuvering, it must appear that administrative decisions at the Commission are without reason. The inevitable result has been the creation of an institutional culture biased against change and innovation. This serves no public interest. It is not what Congress intended. It should be changed.

Very truly yours,

Anne E. Brunsdale

Anne E. Brunsdale
Acting Chairman

VIA FAX

The following are GAO's comments on the Acting Chairman's letter dated December 13, 1991.

GAO Comments

1. On December 13, 1991, Don E. Newquist was appointed ITC Chairman. Former Acting Chairman Brunsdale continues as Vice Chairman.

2. A comparison of this letter with the other commissioners' letter (see app. III) demonstrates that each side thinks the ITC's statute supports a different interpretation of how administrative decisions should be made.

3. The Acting Chairman's proposal makes more sweeping changes than what we suggest the Congress consider; the changes she suggested would greatly reduce both the scope and nature of the statutory checks and balances on a chairman's administrative authority.

Comments From Commissioners Lodwick, Rohr, and Newquist

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

December 4, 1991

Mr. Frank C. Conahan
Assistant Comptroller General
National Security and International Affairs Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan,

Thank you for the opportunity to comment on GAO's draft report, "International Trade Commission: Administrative Authority is Ambiguous" (GAO Code 483559). We also thank the ITC senior staff for their comments, which we find in order.

To summarize our comments:

See comment 1.

(1) GAO does not define the criteria used as a basis for this report. Absent clearly defined criteria for the judgments made by GAO, there is no rationale for its characterization of certain conditions at the ITC as "problems."

See comment 2.

(2) GAO repeatedly describes the ITC statute as "ambiguous" with respect to the administrative authority of the chairman and the rest of the Commission. However, under ITC's governing statute there is no ambiguity in administrative authority, but rather a deliberate system of checks and balances for the exercise of authority by the chairman and the commissioners.

See comment 3.

(3) The GAO report has several major omissions that color its analysis. GAO omits consideration of the two nonstatutory factors they themselves say affect the power of the chairman --the chairman's personality and leadership style and the nature of the politics surrounding the ITC's substantive work. These factors were of paramount importance in accounting for conditions at the ITC during the limited period examined.

See comment 4.

(4) GAO's study of the ITC addresses conditions during only two chairmanships out of the eight that have occurred since 1977 legislation established the ITC's current administrative provisions.

See comments 2 and 5.

(5) GAO finds that a major cause of the observed conditions is the statutory authority of a Commission majority to override a chairman's administrative decisions. However, this authority was purposefully built into the ITC statute by Congress. It is essential to maintaining a balance of legislative and executive branch influence on the ITC and preserving the agency's independence.

See comment 6.

(6) The GAO report fails to emphasize important powers of the ITC chairman, such as the power to refuse to fund changes authorized by the majority and the power to initiate administrative actions with the support of less than a majority of the Commission.

See comments 7 and 8.

(7) GAO does not include many relevant details in describing the effects of conditions at the ITC. It ignores the fact that the agency is performing its statutory responsibilities in a timely and competent manner. Although GAO claims that one effect is the creation of a culture against innovation and change, the ITC has successfully initiated significant changes throughout the period addressed by the report.

Criteria

See comment 1.

In preparing this report, GAO does not define the criteria against which ITC administration, in particular the power of the chairman, is judged. Without clear criteria, there is no basis for determining that any observed condition is necessarily a "problem." Such characterization by GAO appears to result from several inferred criteria. These are: (a) administrative authority in a commission should not be ambiguous; (b) decision making should be uncontentious, if not unanimous, to avoid organizational "inefficiencies;" and (c) a culture should exist that encourages innovation and change.

A more pertinent choice of criteria for this study would include the quality and timeliness of both the administrative and substantive work of the agency. Examples are the budget process and investigations.

ITC budgets are thoroughly considered and always submitted to Congress on schedule; and investigations result in timely submissions of quality work products. The agency certainly would measure well against such criteria.

See comment 2.

In addressing GAO's inferred criteria, we agree that ambiguous administrative authority in a Commission could be a problem. However, administrative authority in the ITC, as defined by statute and interpreted by the agency's General Counsel, is not ambiguous.

Our decision making process reflects the checks and balances established by Congress to protect the agency against a chairman's abuse of authority and preserve its independence. Many ITC decisions, both substantive and administrative, are not unanimous and involve some differences of opinion. That, however, does not indicate an ambiguity in administrative authority. Lastly, the statute governing ITC administration provides safeguards against inappropriate or harmful change, but does not discourage constructive change approved by a majority of the commissioners. These points are discussed in detail below.

Conditions

Conditions at the ITC as described by GAO are couched in decidedly negative terms. According to the report, administrative responsibilities at the ITC are "unclear," leading to persistent disagreements concerning the role of the chairman and the other commissioners; and administrative decisions are disputed more at the ITC than at other commissions examined.

See comment 3.

In its analysis of ITC administration, GAO recognizes three elements of leadership, yet addresses only one. GAO avoids discussion of (1) "the personality and leadership style of the chairman and the other commissioners" or (2) "the nature of the politics surrounding ITC's substantive work." Failure to discuss these two factors provides an incomplete and unbalanced study. During the period GAO covers, these variables were critical to the atmosphere of collegiality at the ITC.

See comment 4.

In addition, it must be emphasized that most of the findings in this report reflect the limits GAO places on the time frame of the study. Although the statute delineating the powers of the chairman was

approved in 1977, and the study claims to report conditions "over the years," the events GAO describes all occurred after June 1986 under the leadership of only two of the eight commissioners who have been chairman since 1977.

See comment 2.

As stated earlier, there is nothing "unclear" about administrative responsibilities at the ITC. The statutes define the responsibilities of the commissioners and the chairman. Staff responsibilities are set forth in agency mission and function statements, accepted by the commissioners. Not surprisingly, some commissioners who find themselves in the minority on decisions might allege lack of clarity.

See comment 9.

Distortions have occurred, however, in the execution of responsibilities, particularly in the period since June 1986. For example, the chairman's Executive Assistant on occasion has performed more of a line than staff function (approved by the chairman), altering the authority, if not the responsibilities, of certain staff directors.

Similar problems with the execution of the chairman's responsibilities have led to tensions between chairmen and the majority of the Commission during the past five years. That does not mean that the responsibilities themselves are unclear.

See comment 10.

As to the level of disputes at the ITC, when Congress created a Commission of six members, no more than three from any one party, it did not envision unanimity in decision making, but collegiality. A chairman must seek consensus for administrative decisions among at least half the commissioners serving. This, in turn, requires genuine consultation by the chairman, as opposed to "non-binding advice-seeking" or unilateral action.

In the early 1980's, differences among the commissioners were resolved relatively quickly, as personal consultation by chairmen produced an atmosphere of trust that facilitated resolution. Even though the ITC was under considerable budgetary and workload pressure during those years, tough administrative decisions did not trigger opposition as they did after 1986.

Cause of the Conditions

GAO finds the main cause for the observed conditions in the ITC's "unique administrative

provisions." By this GAO refers to the power of the Commission majority to override any administrative decision of the chairman.

See comment 11.

The report extensively discusses the application and the threat of override and maintains that the override authority involves commissioners in the micromanagement of the agency. In fact, the commissioners have used the override only eight times during the past decade, five of those times during the period from June 1986 through 1987. During that decade, hundreds of administrative decisions were made by chairmen. The few overrides countered a range of actions from recruitment to a change in procedures for 337 investigations. To some, the overrides might appear to be micromanagement; but to knowledgeable observers, the overrides involved decisions that substantially affected the general operations of the agency for which the commissioners as a whole have responsibility.

See comment 5.

Chairmen could avoid overrides through consultation and negotiation and did so in the past. The statutes give commissioners the right to override, but do not provide for notification by the chairman of potentially sensitive administrative actions. Therefore a chairman is not required to provide such notification and consult with fellow commissioners. When a chairman does not, however, distrust results, and commissioners strive to obtain essential information. GAO notes that since August 1986, commissioners have received weekly reports on personnel changes and major procurements. Failure of the chairman to communicate several significant actions to commissioners during the summer of 1986 led commissioners to request those reports.

See comment 9.

The override authority was provided by Congress to prevent a chairman from thwarting the will of the majority (which given the composition required by law for this Commission, must be bipartisan) in administering the agency. It is an essential instrument for balancing the influence of Congress and the executive branch and preserving the independence of the ITC.

<u>Effects of Conditions at the ITC</u>

GAO investigators identify several effects of the allegedly ambiguous adminstrative authority and dissension at the ITC. They include: conflicting staff priorities; prolonged and contentious budget consideration; delayed decision making in such areas as

personnel selection and reorganization; and the development of a culture against innovation and change. To the extent that the effects they identify did occur, they occurred under only two chairman and they clearly did not affect the ability of the agency to carry out its mission.

See comments 4 and 7.

Conflicting Staff Priorities -- When the chairman disagrees with the majority of commissioners on many issues, the agency is a less pleasant work environment for employees. But senior staff recognize that all commissioners carry responsibility for agency operations, and staff have established procedures for handling requests in a responsive and responsible manner. The commissioners, on their part, try to avoid placing staff "in the middle" of disputes and they request information, but not staff support of positions.

See comment 12.

GAO reports that commissioners request multiple budget proposals from Finance and Budget Office staff. This generally involves requests for appropriate allocation of funds to provide for special needs of the agency as perceived by the requesters. In this age of computers, these alternative budgets are not an undue burden on staff and they are very helpful to commissioners in making decisions in the one administrative area where a majority affirmative vote is required, the budget determination. Moreover, information is imperative to a commissioner's preparation for making a statutorily mandated decision on the budget. The law does not intend that the Commission's role is simply to rubber-stamp the chairman.

See comment 7.

Prolonged and Contentious Budget Consideration -- The budget process, while intensive, has never been prolonged to the point where budgets were not submitted to Congress in a timely fashion. Any delays in the process in recent years have occurred because the chairman's proposals to the Commission were not distributed and discussed with commissioners well in advance of a budget vote. Upon special request of the commissioners, the Finance and Budget Office proposals were distributed to them on schedule, but not the proposals of the chairman, which are required by law and absolutely essential to moving the process forward.

Another source of budget conflict involves the expenditure plan for the current year. If the Congress-approved appropriation for the year differs from the Commission-approved amount and major funding

See comments 2 and 9.

allocations must be adjusted, the majority of the Commission has taken the view that the adjustments constitute a new budget formulation that must be approved by the Commission. The chairmen since 1986 have disagreed, although the majority's position is consistent with the ITC General Counsel's interpretation of the statute. There is no argument that within major allocations, the chairman has discretion to approve or disapprove expenditures subject, of course, to majority override.

See comment 13.

When the GAO report proposes that the statutory language defining the budget be clarified and that the chairman be given responsibility to expend funds within the broad guidelines approved by the Commission, it is unclear what GAO considers to be the "broad guidelines." To permit a chairman to rearrange the major funding allocations at will would deny the Commission majority the powers and the protections intended by Congress.

Delayed Decision Making Regarding Personnel Selection and Reorganization -- During the past five years, commissioners have been particularly vigilant concerning personnel recruitment and selection because the majority differed with two chairman regarding methods for carrying out the statutory obligations of the agency. The majority resisted some selections they believed were made for ideological or political reasons rather than on the basis of ability. The qualification requirements and ranking factors in certain vacancy announcements were opposed because they were thought to favor selections that did not reflect the needs of the agency.

See comments 5 and 10.

These differences involved key managerial personnel who strongly influence agency functions. Commissioner involvement in these recruitments can in no manner be considered "micromanagement." For example, the override of an outside recruitment mentioned in the report was for the position of Director of Investigations. The Commission majority supported selection of the highly qualified and experienced Acting Director for one of the most important positions in the agency.

See comment 11.

Government personnel procedures often cause delays in filling vacancies, particularly if nongovernment candidates are considered. Such delays are occasionally protracted at the ITC because of disagreements between chairmen and the commissioners concerning candidates. For example, the position of

Director of Public Relations has not been filled for over two years. During the first year of the vacancy, the chairman sought appointment of a minimally qualified candidate opposed by the majority of commissioners. OPM also judged other candidates more qualified, candidates the chairman opposed. Therefore that search was vacated, and as a result, the agency still has an Acting Director during the important period of its 75th anniversary commemoration.

See comment 10.

The nature and pace of organizational changes during the years since 1986 also reflect the tensions between the chairman and the majority. The majority did not oppose creating a new structure for Information Resources Management, for example. However, they did oppose using the new structure as the occasion to make unnecessary and disruptive personnel changes. Also, the period when the IRM plan was under consideration was one in which the Commission was converting to large-scale use of personal computers and undertaking a major relocation. The majority believed that an IRM reorganization should wait until these steps were completed.

See comment 7.

As to the establishment of the Office of Inspector General, the November 14, 1991 comments of the Commission IG to GAO make it clear that although there was debate over certain issues, the ITC established the office well in advance of the legislative deadline.

At this time, there are no "unresolved" organizational issues at the ITC. There is, however, one majority-approved organizational change (placing the Applied Economics Division in the Office of Investigations) that has not been properly implemented by the chairman. Thus many of the efficiencies the majority envisioned as resulting from this change have not been realized.

See comment 9.

This is an important illustration that the chairman in fact does have significant power -- power to refuse to expend funds for a purpose authorized by the majority if the chairman opposes the purpose. Also, the fact that the chairman does not need a majority of Commissioners in order to sustain an administrative action, but a majority is required to override an action, means that the chairman in effect has two votes on administrative matters.

See comment 8.

A Culture Against Innovation and Change -- The decade of the 1980's was a period of very great change for the ITC. The 1979 Trade Law and its later

amendments, the emphasis placed on trade issues by Congress and the executive branch, and new requirements for public disclosure and judicial review required major adjustments in Commission operations.

The changing workload demanded new staff with new skills. New offices were established, including the Trade Remedy Assistance Office and the Office of Inspector General. The agency switched from using a mainframe computer to establishing networks of personal computers. It reorganized several offices, including Information Resources Management, Tariff Affairs and Trade Agreements, and Industries. It adapted to the demands placed on its investigation procedures by requirements to serve information to parties under administrative protective order. Significantly, it also completed a consolidation move to a new headquarters that it helped to design and equip.

See comment 2.

These actions could not have been completed successfully in a culture against innovation and change. There has been, however, formidable and responsible resistance by the Commission majority to change that could damage the agency, jeopardize its work product, or frustrate its mission. Congress provided the weapons to mount that resistance.

The GAO report itself notes that "Congress purposefully constrained the chairman's power in order to ensure the ITC's independence and objectivity." Such constraints have helped preserve these essential qualities of the agency, conceived by Congress in framing ITC's legislation. Over time, the constraints have convincingly demonstrated that they work successfully.

Sincerely yours,

Seeley G. Lodwick, Commissioner

David B. Rohr, Commissioner

Don E. Newquist, Commissioner

The following are GAO's comments on the commissioners' letter dated December 4, 1991.

GAO Comments

1. Problems are situations that detract from the efficiency and effectiveness of the ITC's use of resources, direction of staff, and execution of administrative responsibilities. In most cases, the situations we describe in our report were also identified as "problems" by the chairman, the commissioners themselves, members of their personal staff, and/or agency staff in testimonial and documentary evidence we collected.

2. A comparison of this letter with the Acting Chairman's letter (see app. II) demonstrates that each side thinks the ITC's statute clearly supports a different interpretation of how administrative decisions should be made. In our view, each side can reasonably support its position with different provisions in the ITC's statute, hence the ambiguity.

3. We acknowledge that we did not analyze chairmen's personality and leadership styles and did not analyze the politics surrounding the ITC's substantive decisions. Nevertheless, administration of the agency, including the framework of statutory checks and balances, was intended to be efficient and effective despite various personalities and political situations.

4. We talked to the four chairmen who have served since 1982. While the level of administrative disagreement has varied from chairman to chairman since the 1977 amendments to the ITC's statute took effect, our report focused on recent events (roughly the last 6 years) for two reasons. First, congressional concerns had been heightened because, compared to their predecessors, the last two chairmen's terms were marked by dissent. Second, the necessary documentation was not available for us to assess earlier chairmen's terms. (Notwithstanding, our review did indicate that similar debates occurred earlier, but on a smaller scale.) We believe that the different interpretations of administrative accountability are serious and persistent enough to warrant congressional consideration.

5. In 1977 the Congress sought to remove the commissioners from day-to-day administration. However, the override provision currently involves commissioners in monitoring and potentially participating in any and all administrative decisions.

6. The 1977 amendments to the ITC's statute vested the chairman with powers that were previously shared by all commissioners as a whole,

including budget execution and the power to initiate administrative decisions. We believe we have adequately described these powers and their importance in chapters 1 and 2.

7. We did not find that ITC had violated any statutory deadlines and have clarified the text to indicate this finding where appropriate. However, meeting statutory deadlines is a minimum requirement for timely and competent management, and agencies should strive to conduct their business efficiently and effectively.

8. The changes cited by commissioners are either statutorily mandated or suggested by our previous reports. The characterization of a culture against innovation and change was made by several commissioners and several ITC staff members. Our report appropriately attributed this statement.

9. As we discuss in our report, disagreements over who has what authority have gone on for years without resolution. Some commissioners have seen the statute as requiring the chairman to seek consensus and follow the opinion of the majority in making administrative decisions; they complained about the chairman's lack of consultation and described problems with the execution of responsibilities. Other commissioners have viewed the statute as giving the chairman sole authority to make almost all administrative decisions; they complained about commissioners' attempts to micro-manage the agency.

10. Throughout their letter, the group of three commissioners point out that a majority of the commissioners disagreed with the chairman's administrative decisions and that they acted in response. We found disagreement over how administrative decisions should be made as well as disagreement over the best decision. In contrast, the Acting Chairman's letter described commissioners involving themselves in decisions she was responsible for as administrative head of the agency. Because the chairman and the other commissioners have unclear roles in leading the agency, a disagreement between the chairman and a majority of the other commissioners can create a dilemma.

11. The Acting Chairman's letter describes "the paralyzing effect" created by the override provision on a chairman's decisions and how the threat of a veto can lead to a standoff within the commission. (See app. II.)

12. In making technical comments, ITC staff did not object to our statements that providing needed information to both sides of an administrative dispute places them in a difficult situation. They also object to statements that other commissioners' participation in admi tive decisions can add to their work.

13. The phrase the commissioners find unclear in our report is the guidance that legislators gave when they created the 1977 provision concerning commissioner involvement in the ITC's budget process. G the different interpretations of the statute, this ambiguity supports tl need for clarification of the chairman's and the other commissioners budget responsibilities.

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